Bart L. Graham
Commissioner

State of Georgia
Department of Revenue
Suite 15300
1800 Century Boulevard
Atlanta, Georgia 30345
(404) 417-2100

NOTICE

RE: (I) Repeal of current Rule and adoption of new Rule 560-7-3-.06 "Taxation of Corporations. Amended." and Repeal of current Rule and adoption of new Rule 560-7-3-.13 "Consolidated Returns."

(II) Repeal of current Rule and adoption of new Rule 560-7-4-.01 "Net Taxable Income (Individual). Amended."

(III) Repeal of current Rule and adoption of new 560-7-7-.03 "Corporations: Allocation and Apportionment of Income."

TO ALL INTERESTED PERSONS AND PARTIES:
In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Chapter 560-7-3 of the Rules and Regulations of the State of Georgia by repealing current Rule 560-7-3-.06, entitled "Taxation of Corporations. Amended." and adopting a new Rule with the same number and name to replace it, and by repealing current Rule 560-7-3-.13, entitled "Consolidated Returns." and adopting a new Rule with the same number and name to replace it.

The Department also proposes to amend Chapter 560-7-4 by repealing current Rule 560-7-4-.01, entitled "Net Taxable Income (Individual). Amended." and adopting a new Rule with the same number and name to replace it.

The Department also proposes to amend Chapter 560-7-7 by repealing current Rule 560-7-7-.03, entitled "Corporations: Allocation and Apportionment of Income." and adopting a new Rule with the same number and name to replace it.

Attached with this notice are the exact copies and synopses of the proposed Rules. The proposed Rules are being adopted under the authority of O.C.G.A. §§ 48-2-12, 48-7-21, 48-7-27, and 48-7-31.

The Department of Revenue shall consider the adoption of the above referenced Rules at 10:00 a.m. on December 2, 2005 in Suite 15210 of the Department's headquarters at the below address.

The Department must receive all comments regarding the above referenced proposed Rules from interested persons and parties no later than 10:00 a.m. December 2, 2005. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-6651. **Please reference "Notice Number IT-2005-4" on all comments.**

Dated: October 31, 2005

Bart L. Graham
Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS

560-7-3-.06
Taxation of Corporations. Amended.

The purpose of proposed Rule 560-7-3-.06 is to provide guidance regarding the administration of O.C.G.A. § 48-7-21, which provides for the taxation of corporations.

Paragraph (1) specifies how Georgia taxable income is computed.

Paragraph (2) provides the definition of “affiliated corporation” for purposes of the affiliated corporations dividend deduction.

Paragraph (3) specifies the provisions relating to separate returns.

Paragraph (4) provides that consolidated returns are treated pursuant to regulation 560-7-3-.13.

Paragraph (5) provides for the treatment of separate return net operating losses including the application of Internal Revenue Code §§ 108, 381, 382, and 384.

Paragraph (6) provides for the treatment of “S” elections.

RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS

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560-7-3-.06 Taxation of Corporations. Amended.

~~(1) Rate of taxation. Every domestic and foreign corporation shall pay annually an income tax equivalent to six percent (6%) of its "Georgia taxable net income," "Georgia taxable net income" is defined as the taxable income of a corporation from property owned or from business done in Georgia and is the taxable income of a corporation as defined in Section 63 of the Internal Revenue Code with the adjustments provided in Section 92-3102(b) of the Code and paragraph (2) of this section, allocated and apportioned as provided in Section 92-3113 of the Code and Section 560-7-7-.03 of these regulations.~~

~~(2) Adjustments to Federal taxable income. The determination of Georgia taxable net income requires that the following adjustments to Federal taxable income be made as provided in Section 92-3102(b) of the Code.~~

~~(a) Interest and dividend adjustment.~~

~~1. There shall be added to Federal taxable income:~~

~~(i) Interest income on obligations of any State or political~~

~~subdivision, except Georgia and its political subdivisions, to the extent such interest income is not included in Federal gross income; and~~

~~(ii) Interest or dividends on obligations of any authority, commission, instrumentality, territory or possession of the United States which are exempt from Federal income tax but not from State income taxes.~~

~~2. There shall be subtracted from Federal taxable income:~~

~~(i) Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States, to the extent included in Federal gross income but exempt from State income taxes; and~~

~~(ii) Dividends on stocks of banks and trust companies incorporated under the banking laws of Georgia or the United States, to the extent included in Federal taxable income.~~

~~3. Any amount subtracted under this adjustment shall be reduced by any expenses directly attributable to the production of interest or dividend income.~~

~~(b) Income tax deduction adjustment.~~

~~1. There shall be added to Federal taxable income any income tax imposed by this State or any other taxing jurisdiction, to the extent deducted in determining Federal taxable income. 2. There shall be subtracted from Federal taxable income any refund or credit of Georgia or any income tax, to the extent included in Federal taxable income.~~

~~(c) Gain or loss adjustment.~~

~~1. There shall be subtracted from Federal taxable income a~~

~~portion of the gain on the sale or other disposition of property having a higher basis for Georgia income tax purposes than for Federal income tax purposes, measured by the difference between the Georgia basis and the Federal basis, but limited to the amount of such difference included in Federal taxable income.~~

~~2. There shall be added to Federal taxable income a portion of the loss on the sale or other disposition of property having a lower basis for Georgia income tax purposes than for Federal income tax purposes, measured by the difference between the Georgia basis and the Federal basis, but limited to the amount of such difference included in Federal taxable income. 3. There shall be subtracted from Federal taxable income any amount necessary to prevent taxation under the Act of any item of income already taxed by Georgia under the laws of this State in effect prior to January 1, 1969. This adjustment will also cover income or gain where:~~

~~(i) A sale was previously reported in full to Georgia.~~

~~(ii) An original sale was not subject to the Georgia Income Tax Act.~~

~~(d) Deductions and loss adjustment. There shall be added to Federal taxable income in any tax year any deductions or losses, including net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in Georgia, to the extent deducted in determining Federal taxable income.~~

~~(e) Capital gains adjustment. There shall be subtracted from Federal taxable income one-half of the excess of any net long term capital gain over net short-term capital loss included therein. The amount subtracted is equal to one-half of the amount used to compute the alternative tax under Section 1201(a) of the Internal Revenue Code .~~

~~(f) Section 337 gain adjustment.~~

~~1. There shall be added to Federal taxable income any gain excluded therefrom realized on a sale or exchange of property which qualifies for nonrecognition under Section 337 of the Internal Revenue Code . If a corporation operates both within and without Georgia, any gain under Section 337 shall be apportioned as provided in Section 3113 of the Code and Section 560-7-7-.03 of these regulations.~~

~~2. To the extent that a corporation incurs a Georgia income tax liability by reason of the adjustment provided above, such liability shall be allowed as a credit against the Georgia income tax liability of each common stockholder of such corporation in an amount which bears the same ratio to such Georgia income tax liability as the liquidation distribution received or receivable by such common stockholder bears to the liquidation distribution received or receivable by all common stockholders. Such credit shall be allowable only in the taxable year or years of each stockholder in which such liquidation distribution is received and shall be limited to the amount of Georgia income tax liability, if any, of such stockholder for such year or years as computed before any credits for withholding or estimated tax payments.~~
~~(Amended 10-17-74.)~~

~~(g) Nonrecognition of gain adjustment. There shall be added to Federal taxable income any excluded gain on the sale or exchange of real or tangible personal property located in Georgia, not recognized under the Internal Revenue Code because the taxpayer receives or purchases similar property, when such property is replaced with property located outside of Georgia.~~

~~(h) Exempt by Georgia law adjustment. There shall be subtracted from Federal taxable income any amounts included therein which are specifically exempt from Georgia income tax under the laws of the State of Georgia.~~

~~(i) Dividends from sources without or within the United States adjustment. There shall be subtracted from Federal taxable income to the extent included therein:~~

~~1. Dividends received by a corporation from sources without the United States as defined in the Internal Revenue Code, and~~

~~2. Dividends received by corporations from affiliated corporations within the United States, when the corporation receiving dividends is engaged in business in Georgia and subject to the payment of income tax under Georgia law; provided however, the amounts subtracted above shall be reduced by any expense directly attributable to the dividend income.~~

~~(4) Net Operating Loss.~~

~~(a) For any taxable year beginning on or after January 1, 1969, in which the taxpayer takes a Federal net operating loss deduction on its Federal income tax return, the amount of such deduction shall be added back to Federal taxable income, and Georgia taxable net income for such taxable year shall be computed from the taxpayer's Federal taxable income as so adjusted. There shall be allowed as a separate deduction from Georgia taxable net income so computed an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year. The term "Georgia net operating loss deduction" shall mean the deduction allowed by this subparagraph.~~

~~(b) For any taxable year beginning on or after January 1, 1969, in which the taxpayer has a Federal net operating loss, the Georgia net operating loss for such taxable year shall be computed by making the same adjustments to the Federal net operating loss that are made to Federal taxable income to determine Georgia taxable net income (i.e., the adjustments provided in Section 92-3102(b) of the Code and paragraph (2) above), and in the case of corporations~~

~~doing business both within and without Georgia, by allocating to Georgia only the amount of the loss attributable to operations within Georgia. The term "Georgia net operating loss" shall mean the loss computed as provided in this subparagraph. In the event the net Georgia adjustments completely offset the Federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the Federal net operating loss shall constitute Georgia taxable net income after any such excess has been allocated and apportioned to Georgia as provided in Section 92-3113 of the Code and Section 560-7-7-.03 of these regulations.~~

~~(c) The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in Section 172 of the Internal Revenue Code; provided, however, any Georgia net operating loss incurred in any taxable year beginning on or after January 1, 1969, shall not be carried back to a taxable year which began before January 1, 1969, and provided further, where the Georgia net operating loss would otherwise be carried back under the provisions of the Internal Revenue Code to a taxable year that began before January 1, 1969, such loss shall be carried back to the earliest taxable years beginning on or after January 1, 1969, and then carried over to the taxable years specified in Section 172 of the Internal Revenue Code. The terms "Georgia net operating loss carryback" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss carried back or carried over in the manner and for the number of years as provided in this subparagraph.~~

~~(d) In respect to a net operating loss incurred in any taxable year beginning before January 1, 1969, the amount of the Georgia net operating loss carryover, and the period for which it may be carried over shall be determined under the provisions of the Georgia income tax laws in effect at the time the loss was incurred, and in~~

~~the case of corporation doing business both within and without Georgia, such net operating loss carryover shall be a deduction from the net income of the corporation before apportionment for the year for which such deduction is allowable. (e) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback, a claim for such refund must be filed on or before the fifteenth day of the fortieth month following the close of the taxable year wherein the loss was incurred. The tax refundable shall be deemed to have been erroneously assessed and collected, and shall be paid under the provisions of Section 92-8436 of the Code; provided, however, no interest shall accrue or be paid for any period prior to the close of the taxable year in which such net operating loss arises.~~

~~(f) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under this subsection, an application for a tentative carryback adjustment of the taxes for the prior taxable year or years affected by a net operating loss carryback may be filed within a period of twelve months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund. Within a period of ninety days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he deems practicable in such period, a limited examination of the application to determine the amount of decrease in any tax attributable to such carryback upon the basis of the application and the examination, but the Commissioner may disallow without further action any application which contains errors of computation which he deems cannot be corrected within such ninety day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund shall be without interest. If~~

~~the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback with respect to which such amount was credited or refunded, he may. asses the amount of the excess as deficiency as if it were due to a mathematical error appearing on the face of a return.~~

~~(4) Consolidated returns.~~

~~(a) Two or more corporations that file Federal income tax returns on a consolidated basis and derive all of their income from sources within Georgia must file a consolidated return for the purpose of determining their Georgia income tax liability, the same as if such corporations were one corporation.~~

~~(b) Corporations which are members of an affiliated group not deriving their entire income from sources within Georgia and which have filed a consolidated return for Federal income tax purposes may, with permission of the Commissioner, file a consolidated return for the purpose of determining their Georgia income tax liability under the following conditions:~~

~~1. The corporations of the affiliated group must transact a substantial portion of their business in Georgia;~~

~~2. An affidavit must be submitted thirty days prior to the time of filing, signed by the authorized representative of the parent corporation, showing that they have filed a consolidated return for Federal income tax purposes;~~

~~3. This affidavit must also show that, in order to clearly reflect the Georgia income tax liability of the corporations, a consolidated return is necessary for Georgia; and~~

~~4. The Commissioner must find that the filing of a consolidated return will clearly and equitably reflect the Georgia income tax liability of the corporations.~~

~~(c) The Commissioner may require any group of affiliated corporations to file a consolidated Georgia return when, in his opinion, such consolidated return is necessary to clearly reflect the Georgia taxable income of the affiliated group.~~

~~(d) Once a consolidated return is filed for a taxable year and approved by the Commissioner, consolidated returns must be filed for all future years, unless the group does not for any reason file a consolidated Federal return, or unless the Commissioner shall direct otherwise in order to clearly and equitably reflect the Georgia taxable income of the affiliated group.~~

~~(e) Any corporation that files a consolidated return for Federal purposes and a separate return for Georgia purposes must submit all schedules and statements necessary to support taxable income reported on the Georgia return. A statement must be included with the Georgia return indicating that a consolidated Federal return has been filed and indicating the name and address of the parent corporation.~~

~~(3) Allocation of income. Whenever two or more business organizations (whether or not incorporated or affiliated) are owned or controlled directly or indirectly by the same interests, the Commissioner may allocate income, deductions, credits or allowances among such organizations in order to prevent tax evasion or to reflect the income of the group more accurately. "Allocate" as used in this regulation means that income, deductions, credits or allowances, or a portion thereof, reported by one or more members of a group of organizations are, for income tax purposes, attributed to another organization or other organizations within the group. This is to be distinguished from a consolidated return which reports the income of a group of~~

~~affiliated corporations as if the affiliated corporations were a single corporation.~~

~~(6) Subchapter S corporation. For any taxable year beginning on or after January 1, 1969, a small business corporation is exempt from Georgia income tax if a valid election under Subchapter S of the Internal Revenue Code is in effect. The shareholders of such an electing corporation shall include in their Georgia taxable income their proportionate part of the corporation's Georgia taxable income. Provided, however, if any of the shareholders of an electing corporation are non-residents of the State of Georgia, the corporation shall be subject to Georgia income tax unless the corporation files with its Georgia return for the taxable year an agreement executed by all nonresident shareholders wherein said shareholders agree to pay Georgia income tax on their proportionate part of the corporation's Georgia taxable income. For Georgia income tax purposes, an electing small business corporation and the shareholders thereof shall be treated in the same manner as provided in Subchapter S of the Internal Revenue Code and the Federal regulations issued thereunder.~~

(1) **Taxable Income.** Georgia taxable income of a corporation before apportionment and allocation shall be computed pursuant to O.C.G.A. § 48-7-21.

(2) **Affiliated Corporation.** For purposes of the affiliated corporations dividend deduction provided in O.C.G.A. § 48-7-21, the term "affiliated corporation" means a corporation that is a member of the taxpayer's "affiliated group" within the meaning of § 1504 of the Internal Revenue Code. This shall apply whether or not the affiliated group files a federal consolidated return.

(3) **Separate Return.** In the event a taxpayer files a separate return with Georgia but is included in a consolidated federal return, the taxpayer shall start with its separate company federal taxable income or loss. The separate company federal taxable income or

loss shall be the taxable income or loss of the corporation included in the consolidated federal return but without the modifications listed in Internal Revenue Service Regulation § 1.1502-12.

(4) **Consolidated Return.** See Regulation 560-7-3-.13.

(5) **Net Operating Losses.**

(a) Net operating losses shall be treated as provided in paragraph (10) of subsection (b) of O.C.G.A. § 48-7-21.

(b) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under paragraph (10) of subsection (b) of O.C.G.A. § 48-7-21, the taxpayer may file an amended return within the time period prescribed by O.C.G.A. § 48-7-21 or alternatively may file an "application for a tentative carryback adjustment of the taxes" within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and examination. The Commissioner may disallow, without further action, any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest. If the

Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

(c) The provisions of § 108 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 108 provisions shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. The reduction in the Georgia net operating losses shall be determined by applying the Georgia apportionment percentage for the year of the discharge to the amount of the Internal Revenue Code § 108 net operating loss reduction determined pursuant to this regulation.

2. If the taxpayer files a consolidated federal income tax return, such provisions shall be applied on a separate entity basis. Thus, except as provided in this regulation, the Internal Revenue Service regulations relating to how to apply Internal Revenue Code § 108 to consolidated returns shall not apply. However, a determination under the federal consolidated return regulations that the separate entity has an amount of discharge of indebtedness income and or is required to reduce tax attributes shall also apply for Georgia purposes except that paragraph (a)(4) of Internal Revenue Service Regulation § 1.1502-28 shall not apply.

3. Any elections, with respect to the order of the tax attribute reductions, made for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations, shall also apply for Georgia purposes.

(d) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 381, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. If the taxpayer files a consolidated federal income tax return, such provisions shall be applied on a separate entity basis. However, when one or more members is a distributee of assets in a liquidation to which Internal Revenue Code § 332 applies and such member or members in the aggregate own stock of the liquidating corporation that satisfies the requirements of Internal Revenue Code § 1504(a)(2), such member or members shall succeed to the net operating loss in the same manner as provided in the Internal Revenue Service Regulations.

(e) The provisions of § 382 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 382 limitation shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. Such limitation shall be computed on a separate entity basis even when a consolidated federal income tax return is filed. Except as provided in this regulation, the Internal Revenue Service Regulations regarding how to apply Internal Revenue Code § 382 when a consolidated return is filed and paragraph (f) of Internal Revenue Service Regulation § 1.382-8 shall not apply for Georgia purposes.

2. A determination that an ownership change has occurred for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) shall apply for Georgia purposes.

3. Adjustments to prevent duplication of value contained in the Internal Revenue Code § 382 regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns if a consolidated federal return is filed) apply for Georgia purposes. However, the election to restore value provided in paragraph (c) of Internal Revenue Service Regulation § 1.382-8 shall not be available.

4. Whenever an ownership change occurs, an Internal Revenue Code § 382 limitation will apply to all Georgia pre-change losses that are carried over to a post-change year. "Pre-change years" end on or before the date of an ownership change, while "post-change years" end after the date of an ownership change. In a post-change year, the limitation on the use of any pre-change year Georgia net operating losses shall be determined by applying that post-change year's apportionment percentage to the Internal Revenue Code § 382 limitation for that post-change year determined pursuant to this regulation.

5. The Internal Revenue Code § 382 limitation does not reduce the total amount of pre-change Georgia net operating losses available for carry forward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

6. If there is any unused Internal Revenue Code § 382 limitation for Georgia purposes in a post-change year, the following year's limitation shall be increased by the excess amounts determined for Georgia tax purposes in a manner similar to Internal Revenue Code § 382(b)(2).

(f) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 384, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. When a consolidated federal return is filed, the adjustment for such

Internal Revenue Code Section shall be determined on a separate entity basis. The limitation on offsetting losses against any recognized built in gains which are allocated to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains. The limitation on offsetting losses against any recognized gains which are apportioned to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains multiplied by the apportionment percentage for the recognition period taxable year.

(g) Consolidated net operating losses, including the application of §§ 108, 381, 382, and 384 of the Internal Revenue Code of 1986, shall be treated as provided in Regulation 560-7-3-.13.

(6) **"S" Elections.**

(a) The Federal treatment of a Qualified Subchapter S Subsidiary (QSSS) applies for income tax purposes but not net worth tax purposes.

(b) In the case of an S corporation where the Subchapter "S" election is not recognized as provided by O.C.G.A. §§ 48-7-21 and 48-7-27 the following shall apply:

1. Losses incurred in a year the corporation is treated as an S corporation shall not be carried to a year the corporation is treated as a C corporation.

2. Net operating losses incurred in a year the corporation is treated as a C corporation shall not be carried to a year the corporation is treated as an S Corporation. For example, in 2002 the corporation is treated as a C corporation and has a net operating loss. The corporation elects to forego the carryback period and carries the net operating loss forward. In 2003 the corporation is

treated as an S corporation. The net operating loss from 2002 may not be claimed in 2003. In 2004 the corporation is treated as a C Corporation. The net operating loss from 2002 may be claimed in 2004. However, the year the corporation is treated as an S Corporation is included as a taxable year for the purpose of determining the number of taxable years that a net operating loss may be carried forward or back.

3. In a year the corporation is treated as a C corporation, the federal taxable income for purposes of O.C.G.A. § 48-7-21 shall be the federal taxable income of the S corporation including the separately stated items of income or loss (such as contributions and depletion).

4. The federal treatment of a Qualified Subchapter S Subsidiary (QSSS) applies even in a year the parent corporation is treated as a C corporation for Georgia purposes.

Authority O.C.G.A. §§ 48-2-12 and 48-7-21.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS

560-7-3-.13
Consolidated Returns.

The purpose of proposed Rule 560-7-3-.13 is to provide rules with respect to consolidated returns.

Paragraph (1) provides conditions whereby a group of corporations may request permission to file a consolidated Georgia income tax return and provides conditions whereby the Commissioner may require a group of affiliated corporations to file a consolidated Georgia income tax return.

Paragraph (2) provides for the filing of an "Application for Permission to File Consolidated Georgia Income Tax Return", provides a time for filing such application, and provides for the composition of the Georgia consolidated group.

Paragraph (3) provides that the Commissioner's standard of discretion for allowing consolidated returns relates to the clear and equitable reflection of income, provides for tentative permission, provides for prospective revocation of permission, and provides for retroactive revocation of permission in case of material omissions or misstatements.

Paragraph (4) provides that approved or required consolidated Georgia returns must continue to be filed and provides for circumstances where such approval or requirement may cease.

Paragraph (5) provides that corporations that file a consolidated Georgia income tax return are required to consolidate separate company income or loss on a post-apportionment basis.

Paragraph (6) provides that corporations that file a consolidated Georgia income tax return are required to report and pay the net worth tax on a separate company basis.

Paragraph (7) provides that tax credits be calculated and claimed on a separate company basis, provides that limits on credits be computed on a separate company basis, provides for the treatment of net operating losses as they relate to credits, provides for the consolidated rules with respect to the assignment of credits under O.C.G.A. § 48-7-42.

Paragraph (8) provides for the treatment of consolidated net operating losses including the application of Internal Revenue Code §§ 108, 381, 382, and 384.

Paragraph (9) provides transition rules for the calculation of net operating loss carryforwards.

Paragraph (10) provides the effective date.

RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS

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560-7-3-.13 Consolidated Returns.

~~(1) **Filing of Consolidated Returns.**~~

~~(a) **Corporations Deriving All of Their Income From Georgia.** Where two or more corporations file Federal income tax returns on a consolidated basis and where all of the corporations in such federal consolidated return derive all of their income from sources within Georgia, such corporations must file a consolidated return for the purpose of determining their Georgia income tax liability pursuant to the methodology set out in this regulation.~~

~~(b) **Corporations Deriving Income In Part From Sources Outside the State.** Where a group of affiliated corporations file a consolidated income tax return for Federal income tax purposes, and where one or more of these corporations derive income from sources both within and without Georgia, members of this affiliated group may, pursuant to paragraph (2) of this regulation, petition the Commissioner for permission to file a consolidated return for Georgia income tax purposes.~~

~~(c)~~**~~When Required to Clearly and Equitably Reflect Income Attributable to Georgia~~**~~. The Commissioner may require members of a group of affiliated corporations that file a consolidated return for Federal income tax purposes to file a consolidated return for Georgia income tax purposes, but only when the Commissioner reasonably determines that:~~

~~1. The filing of separate Georgia income tax returns would not clearly and equitably reflect the income of the corporations attributable to property owned and business done in Georgia, and~~

~~2. The filing of a consolidated return would clearly and equitably reflect the income of the corporations attributable to property owned and business done in Georgia~~

~~(2)~~ **~~Application for Permission to File a Consolidated Return.~~**

~~(a)~~ **~~Time for Filing Application.~~** ~~Corporations that wish to request permission from the Commissioner to file a consolidated return for the purpose of determining their Georgia income tax liability must do so by filing "Application for Permission to File Consolidated Georgia Income Tax Return," Revenue Form IT-CONSOL. Such application shall be filed with the Commissioner at least seventy-five (75) days prior to the due date of the Georgia return (including extensions) or at least seventy-five (75) days prior to the filing of the return, whichever occurs first, for the tax year for which permission to file on a consolidated basis is requested. Such application must designate one member of the affiliated group which is authorized to receive the notice of approval or denial or the notices referred to in paragraph (3) on behalf of the entire group, and to execute any consent referred to in subparagraph (f) of paragraph (3) on behalf of the entire group, and an ad-~~

~~dress to which any such notices or consents may be sent.~~

~~(b) **Composition of the Georgia Consolidated Group.** A Georgia consolidated group shall consist of all of the members of an affiliated group of corporations that file a consolidated return for Federal income tax purposes that are subject to Georgia income tax under Chapter 7 of Title 48 of the O.C.G.A; provided, however, that corporations that are immune from Georgia income tax under Federal law shall not be included in the proposed Georgia consolidated group.~~

~~(3) **Standard for Allowing Consolidated Returns; Tentative Permission; Revocation of Permission.**~~

~~(a) **Clearly and Equitably Reflect Income Attributable to Georgia.** Permission to file a Georgia consolidated return shall be granted by the Commissioner when the filing of such return will clearly and equitably reflect the income of the corporations attributable to property owned and business done by the members of the affiliated group in Georgia. A Georgia consolidated return will generally be deemed by the Commissioner to clearly and equitably reflect the income of the corporations included in the return attributable to property owned or business done in Georgia, except as enumerated in subparagraphs (b) through (e) below.~~

~~(b) **Expenses Related to Affiliates Not Included in Georgia Consolidated Group.** If any member of a group of corporations filing a Georgia consolidated return has interest expense attributable to indebtedness incurred in connection with the ownership of stock of one or more corporations which are not included in the Georgia consolidated return, or other deductions from income related to the ownership of stock of one or more corporations which are not included in the Georgia consolidated return, the Commis-~~

~~sioner may, as a condition to the granting of permission to file a consolidated Georgia return, require that such interest or other deductions be excluded in calculating the Georgia income of such member for proposes of the Georgia consolidated return.~~

~~(c)~~ **~~Elimination of Members From Georgia Consolidated Group if Necessary to Clearly and Equitably Reflect Income Attributable to Georgia.~~** ~~If the Commissioner reasonably determines that the inclusion of one or more otherwise eligible corporations in a Georgia consolidated return will not clearly and equitably reflect the income of the consolidated group attributable to Georgia, the Commissioner may, as a condition to the granting of permission to file a consolidated Georgia return by the other members of a Georgia consolidated group, require such corporations to file separate Georgia income tax returns or may require adjustment to the consolidated filing so that the consolidated return will clearly and equitably reflect the income of the Georgia consolidated group attributable to property owned and business done in Georgia.~~

~~(d)~~ **~~Other Adjustments Necessary to Clearly and Equitably Reflect Income Attributable to Georgia.~~** ~~The Commissioner may, as a condition to granting of permission to file a consolidated Georgia income tax return, require such other adjustments as he or she may reasonably determine are necessary in order for the consolidated return to clearly and equitably reflect the income of the Georgia consolidated group attributable to property owned and business done in Georgia.~~

~~(e)~~ **~~Denial of Request by Commissioner.~~** ~~If, upon review of an application for permission to file a consolidated return, the Commissioner reasonably determines that the filing of a consolidated Georgia return as requested by an otherwise eligible affili-~~

~~ated group will not clearly and equitably reflect the income of the group attributable to property owned and business done in Georgia, and distortion cannot reasonably be eliminated by means of one or more of the adjustments authorized in this regulation, then the Commissioner may deny the application and all of the corporations shall be required to file separate Georgia income tax returns for such year. The Commissioner may also deny the application if the corporations fail to provide any information requested by the Commissioner that he has reasonably determined is needed to decide if such application should be granted, and in such event all of the corporations shall be required to file separate Georgia income tax returns for such year.~~

~~(f) **Tentative Permission.** If an application for permission to file a consolidated return is timely filed pursuant to paragraph (2), the Commissioner shall exercise his or her best efforts to fully consider such application and to either grant or deny it prior to the return's due date (including extensions), but any failure by the Commissioner to act on such application by such date shall not be deemed as a grant thereof or permit the filing of a consolidated return by the affiliated group. If, as of fifteen (15) days before the return's due date (including extensions), the Commissioner has requested but not yet received from the affiliated group any information that the Commissioner has reasonably determined is needed to decide if such application should be granted, or if the affiliated group otherwise has not received a response to its timely filed application, the affiliated group may request and shall be entitled to receive tentative permission from the Commissioner to file a consolidated return, which permission may be conditioned on the affiliated group's agreement to provide any such requested information by a date certain acceptable to the Commissioner. If tentative permission is granted pending the receipt of information, the Commissioner shall review and take final action on the application,~~

~~using the standards and criteria set forth in subparagraphs (a) through (e), within seventy-five (75) days after receipt of such information. In all other circumstances where tentative permission has been granted, the Commissioner shall take such final action no later than four months from the Commissioner's receipt of the first such consolidated return. If tentative permission has been granted pursuant to this subparagraph the affiliated group may by written consent allow the Commissioner additional time to complete his or her review and take final action. The Commissioner's tentative permission shall be revoked retroactively if the application is denied, and each member of the affiliated group shall, not later than sixty (60) days after the date of the Commissioner's written notice of denial, file an amended Georgia income tax return on a separate company basis for the affected tax period or periods and pay any additional tax and interest attributable thereto. If the Commissioner determines that any distortion can reasonably be eliminated by means of one or more adjustments to the consolidated return, including but not limited to the elimination of corporations from the consolidated group, the Commissioner may, in lieu of revoking his or her tentative permission, modify it retroactively by written notice specifying the adjustments that are required. Each member of the affiliated group shall, not later than sixty (60) days after the date of the Commissioner's written notice of modification, file either an amended consolidated Georgia income tax return or a separate company return for the affected tax period or periods that is consistent with the adjustments mandated by the Commissioner and pay any additional tax and interest attributable thereto. If the Commissioner has tentatively approved an application but does not issue a written notice of denial, a written notice of approval, or a written notice of modification within the period prescribed in this subparagraph, such application shall be deemed to have been approved.~~

(g) **Prospective Revocation of Permission.** If the Commissioner determines at any time, using the standards and criteria set forth in subparagraphs (a) through (e), that the filing of a consolidated Georgia income tax return, for which permission previously was granted, will not clearly and equitably reflect the income of the affiliated group attributable to property owned and business done in Georgia, the Commissioner may revoke such permission prospectively for all tax periods beginning on or after the date of the Commissioner's written notice of revocation to the affiliated group. In lieu of revocation, the Commissioner may direct changes in the consolidated group or the methodology of filing the consolidated return as set forth in subparagraphs (a) through (d). This subparagraph shall also apply in any case in which an application was deemed to have been approved by the Commissioner pursuant to subparagraph (f).

(h) **Retroactive Revocation of Permission in Case of Material Omissions or Misstatements.** If the Commissioner grants permission to file a consolidated Georgia return but later determines that the application upon which such permission was based contained material omissions or misstatements of fact, whether intentional or otherwise, the Commissioner may revoke his or her permission retroactively by sending written notice of revocation to the affiliated group, recalculate the tax liabilities of each member of the affiliated group on a separate company basis for all affected tax periods, and within the applicable limitations period assess any additional tax, interest, and penalties attributable thereto. This subparagraph shall also apply in any case in which an application was deemed to have been approved by the Commissioner pursuant to subparagraph (f).

(4) **Tax Years for Which Consolidated Returns Must Be Filed once Permission Is Granted.** If a Georgia consolidated

~~group has received permission from the Commissioner to file a consolidated Georgia income tax return for any year, consolidated Georgia returns must be filed for all future tax years, except in the following circumstances:~~

~~(a) The Commissioner either revokes his or her prior permission to file a consolidated Georgia income tax return pursuant to paragraph (3) of this regulation or grants permission to cease filing such a return; or~~

~~(b) The affiliated group of corporations ceases to file a consolidated return for federal income tax purposes, whereupon the corporations must also cease filing a consolidated return for Georgia income tax purposes.~~

~~(5) **Separate Company Computation of Taxable Income or Loss.** Corporations that file a consolidated Georgia income tax return are required to consolidate separate company income or loss on a post-apportionment basis. This shall be accomplished by way of the following process:~~

~~(a) Each corporation within the Georgia consolidated group will prepare a separate company Georgia Form 600.~~

~~(b) The corporation will reflect its name and FEI number in the heading of the return.~~

~~(c) The corporation will begin on line 1 of Schedule 1 with its separate company federal taxable income or loss and will make the appropriate additions to or subtractions from taxable income on lines 2 and 4 of that Schedule.~~

~~(d) If the corporation qualifies to apportion, (e.g. if it does~~

~~business or owns property outside of Georgia) it will complete Schedule 6 and Schedule 7 to determine the amount of separate company Georgia taxable income or loss to be reflected on line 7 of Schedule 1.~~

~~(e) If the corporation has a Georgia separate return limitation year loss, or "GSRLY" (see subparagraph (8)(e) of this regulation), that loss would be reflected on either line 6 of Schedule 1, or line 8 of Schedule 7 of Form 600.~~

~~(f) Intercompany transactions are not eliminated in this process of determining a corporation's separate company Georgia taxable income or loss. However, the Commissioner reserves the right to examine intercompany transactions, and to make appropriate adjustments, to ensure that taxpayers clearly reflect income attributable to controlled transactions and to prevent the avoidance of taxes with respect to such transactions.~~

~~(g) The separate company income or loss of each corporation in the Georgia consolidated group, as reflected on the separate company Form 600's, would then be consolidated on a group Form 600 and reflected on line 5 of Schedule 1 of that Form.~~

~~(h) Any consolidated Georgia net operating loss would be deducted on Schedule 1 line 6 to arrive at the consolidated group's Georgia taxable income or loss on line 7, and the group's income tax, if appropriate, on line 8.~~

~~(i) Schedule 3 of the Group Form 600 would be completed to reflect a computation of tax due or overpayment for the group.~~

~~(6) **Separate Company Computation of Net Worth Tax.** Corporations that file a consolidated Georgia income tax return are required to report and pay the net worth tax on a separate company~~

~~basis.~~

~~(7) **Earning, Claiming and Assigning of Tax Credits.** The jobs tax credit, the investment tax credit, and any other tax credits which may be claimed against the Georgia corporate income tax must be calculated and claimed on a separate company basis. When the code specifies that the amount of the credit taken in any one taxable year be limited to an amount not greater than 50 percent of the taxpayer's state income tax liability, such limit shall be computed on a separate company basis. Assignment of Georgia income tax credits under the terms of O.C.G.A. § 48-7-42 is available within a consolidated Georgia return.~~

~~(8) **Consolidated Return Net Operating Loss Deduction.** A consolidated Georgia net operating loss carry forward or carryback shall be allowed as a deduction on the Georgia consolidated return of an affiliated group under the following rules:~~

~~(a) The Georgia consolidated net operating loss for a taxable year shall include the separate net income or loss of each member corporation, with the adjustments provided for in subsection (b) of O.C.G.A. § 48-7-21 and O.C.G.A. § 48-7-28.2, and allocated and apportioned as provided in O.C.G.A. § 48-7-31. In calculating the separate net income or loss of each member corporation no deduction will be taken for either federal or Georgia net operating losses from other years;~~

~~(b) "Georgia separate return year" as used in this regulation means a tax year of a corporation for which it files a separate return with Georgia or for which it joins in the filing of a consolidated Georgia return by another group;~~

~~(c) "Georgia separate return limitation year", or "GSRLY", as~~

~~used in this regulation means any Georgia separate return year of a corporation or of a predecessor of a corporation;~~

~~(d) A consolidated Georgia Net Operating Loss deduction shall consist of any consolidated net operating loss (per subparagraph (a)) of the group that is carried forward or carried back to a consolidated year, plus any net operating loss incurred by members of the group in Georgia separate return years which may be carried over to that year. However, a net operating loss incurred by a member corporation in a Georgia separate return limitation year shall be subject to the limitation set forth in subparagraph (e);~~

~~(e) Net operating losses carried to a consolidated return year from a Georgia separate return limitation year (GSRLY) may be used to reduce the group's income only to the extent of the income contributed by the GSRLY member. This computation shall be performed first and then any consolidated loss of the group would be applied against any remaining income of the group. (See Example 1)~~

~~Example 1~~

~~Company~~	~~A~~	~~B~~	~~C~~	~~Consolidated Total~~
~~12/31/01~~	~~(75,000)~~ **~~(1)~~**	~~25,000~~	~~10,000~~	~~Separate Company Returns Filed~~
~~12/31/02~~	~~(50,000)~~	~~20,000~~	~~15,000~~	~~Loss (15,000)~~ **~~(2)~~**
~~12/31/03~~	~~50,000~~	~~20,000~~	~~15,000~~	~~85,000~~
~~Less:NOL(GSRLY)~~	~~(50,000)~~ **~~(3)~~**			
	~~0~~	~~20,000~~	~~15,000~~	~~Profit after GSRLY 35,000~~ **~~(4)~~**
~~Consolidated NOL from 12/31/02~~				~~Carryforward (15,000)~~ **~~(5)~~**
~~Consolidated Total Profit 12/31/03~~				~~20,000~~ **~~(6)~~**
~~Total GSRLY Carryforward Company "A"~~	~~(25,000)~~ **~~(7)~~**			

~~Explanation For Example 1:~~

(1) The year 12/31/01 is a Georgia separate return year, and the ($75,000) loss of company A is limited in subsequent years to the income of company A. The years 12/31/02 and 12/31/03 are consolidated post apportionment years.

(2) The 12/31/02 tax year reflects a ($15,000) consolidated loss which may be carried forward.

(3) In 12/31/03, the first consolidated profitable year, any GSRLY loss applies first. Therefore, ($50,000) of company A's loss from 12/31/01 is used against company A's income in 12/31/03.

(4) The reduced income of the group for 12/31/03 is $35,000.

(5) The consolidated loss of ($15,000) from 12/31/02 which was carried forward may now be deducted.

(6) The reduced taxable income is $20,000.

(7) Company A has a remaining GSRLY loss of $25,000 which may be carried forward;

(f) If a Georgia consolidated net operating loss can carry forward to a Georgia separate return year of a corporation which was a member of an affiliated group in the year in which the loss arose, then the portion of the net operating loss attributable to such corporation shall be apportioned to such corporation under the provisions of subparagraph (g) and shall be a net operating loss carryover to such Georgia separate return year. However, such portions shall not be included in the consolidated net operating loss carryovers to the equivalent consolidated return year;

(g) The portion of a Georgia consolidated net operating loss attributable to a member of a group is the consolidated net operating loss multiplied by a fraction, the numerator of which is the separate

~~net operating loss of such corporation, and the denominator of which is the sum of the separate net operating losses of all members of the group in the year in which such losses were incurred. See example 2. The separate net operating loss of such corporation and of each member as is mentioned in this subparagraph shall be computed as follows:~~

~~1. The separate net operating loss for the taxable year that this regulation is first applicable to and each year thereafter shall be computed on a post apportionment basis as is provided in paragraph (5).~~

~~2. The separate net operating loss for each taxable year prior to the taxable year that this regulation is first applicable to shall be computed as follows:~~

~~(i) Income or loss subject to apportionment pursuant to O.C.G.A. §48-7-31(d). When the consolidated group consolidated its income or loss subject to apportionment and then applied the consolidated group's apportionment percentage to the income or loss subject to apportionment (pre-apportionment basis), the portion of the separate net operating loss, attributable to income or loss subject to apportionment, of each separate corporation shall be computed by applying the consolidated group's apportionment percentage to the separate corporation's income or loss subject to apportionment.~~

~~(ii) Income or loss subject to allocation pursuant to O.C.G.A. §48-7-31(c). The portion of the separate net operating loss, attributable to income or loss subject to allocation, of each separate corporation shall be equal to its separate corporation income or loss subject to allocation.~~

~~Example 2~~

~~Company~~	~~A~~	~~B~~	~~C~~	~~Total~~
~~12/31/02 SNTI* (SNOL**)~~	~~(5,000)~~	~~2,000~~	~~(1,000)~~	~~(4,000)~~

Gains $2,000	÷		÷	
Losses ($6,000)	(6,000)		(6,000)	
Net Loss (4,000)	= .8333	0	= .1667	
	X (4,000)		X (4,000)	
NOL	($3,333)	0	($667)	(4,000)

*SNTI=Separate Net Taxable Income
**SNOL=Separate Net Operating Loss

Explanation For Example 2, Member Leaving Group:

Corporation A, B and C file a consolidated return in 12/31/02. On 1/1/03 Corporation C is sold to Corporation D. This example above computes Corporation C's loss carryforward to its new consolidated group and the loss carryforward of the original group, Corporation A&B. Corporation C has a loss carry forward of ($667) and the remaining group (Corporation A&B) has a loss carry forward of ($3,333);

(h) If a corporation ceases to be a member during a consolidated return year, any Georgia consolidated net operating loss carryover from a prior tax year must first be carried to such Georgia consolidated return year even though all or a portion of the Georgia consolidated net operating loss giving rise to the carryover is attributable to the corporation which ceases to be a member. To the extent not absorbed in such consolidated return year, the portion of the consolidated net operating loss attributable to the corporation ceasing to be a member shall then be carried to the corporation's first Georgia separate return year;

(i) Complete schedules must be submitted for all net operating losses carried forward to or from consolidated returns. Schedules must contain information to substantiate which corporations incurred net operating losses and the age of the net operating losses.

~~(9) **Transition Rules for Net Operating Loss Carryforward.**~~

~~(a) Except as provided in subparagraphs (9)(b) and (9)(c), any corporation which has received permission to join in the filing of a Georgia consolidated income tax return and which has joined in the filing of a Georgia consolidated income tax return, in the taxable year immediately prior to the taxable year that this regulation is first applicable to, will be eligible to carryforward to a consolidated return year the net operating loss shown on the returns, filed and accepted by the Department, without being subject to the GSRLY limitations as described in subparagraph (8)(e).~~

~~(b) A corporation which filed as a party to a Georgia consolidated return in the taxable year immediately prior to the taxable year that this regulation is first applicable to and which will not be included in the Georgia consolidated return in the taxable year that this regulation is first applicable to shall be treated as ceasing to be a member of that group for the taxable year immediately prior to the taxable year that this regulation is first applicable to as described at subparagraph (8)(h). The separate company Georgia net operating loss for the corporation, if any, will then be determined according to subparagraphs (8)(f) and (8)(g).~~

~~(c) The separate company net operating loss carryforward for a corporation coming into the group, that did not join in the filing of the Georgia consolidated return for the group in the taxable year immediately prior to the taxable year that this regulation is first applicable to or which has joined in the filing of a Georgia consolidated income tax return of another group in the taxable year immediately prior to the taxable year that this regulation is first applicable to, shall be treated pursuant to the terms of subparagraph (8)(e). A corporation which has joined in the filing of a~~

~~Georgia consolidated income tax return of another group in the taxable year immediately prior to the taxable year that this regulation is first applicable to shall be treated as ceasing to be member of that group for the taxable year immediately prior to the taxable year that this regulation is first applicable to as described at subparagraph (8)(h). The separate company Georgia net operating loss for the corporation, if any, will then be determined according to subparagraphs (8)(f) and (8)(g).~~

~~(10) **Effective Date.** This regulation will apply to taxable years beginning on or after January 1, 2002. Taxable years beginning before January 1, 2002 will be governed by Regulation 560-7-3-.06(4).~~

(1) **Filing of Consolidated Returns.**

(a) **Permission Required to File Consolidated.** Where a group of affiliated corporations file a consolidated income tax return for Federal income tax purposes, the members of this affiliated group may, pursuant to paragraph (2) of this regulation, petition the Commissioner for permission to file a consolidated return for Georgia income tax purposes.

(b) **Treatment of Corporations which were Previously Required to File.** Any Georgia consolidated group, which was previously required to file a consolidated return for taxable years beginning before January 1, 2005, must request permission pursuant to this regulation. However, if such group requested permission for a taxable year beginning on or after January 1, 2002, they are not required to request permission again.

(c) **When Required to Clearly and Equitably Reflect Income Attributable to Georgia**. The Commissioner may require mem-

bers of a group of affiliated corporations that file a consolidated return for Federal income tax purposes to file a consolidated return for Georgia income tax purposes, but only when the Commissioner reasonably determines that:

1. The filing of separate Georgia income tax returns would not clearly and equitably reflect the income of the corporations attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia; and

2. The filing of a consolidated return would clearly and equitably reflect the income of the corporations attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia.

(2) **Application for Permission to File a Consolidated Return.**

(a) **Time for Filing Application.** Corporations that wish to request permission from the Commissioner to file a consolidated return for the purpose of determining their Georgia income tax liability must do so by filing "Application for Permission to File Consolidated Georgia Income Tax Return," Revenue Form IT-CONSOL. Such application shall be filed with the Commissioner at least seventy-five (75) days prior to the due date of the Georgia return (including extensions) or at least seventy-five (75) days prior to the filing of the return, whichever occurs first, for the tax year for which permission to file on a consolidated basis is requested. Failure to request permission by such time will result in the filing of separate income tax returns for the applicable year. Such application must designate one member of the affiliated group which is authorized to receive the notice of approval or denial or the notices referred to in paragraph (3) on behalf of the en-

tire group, and to execute any consent referred to in subparagraph (f) of paragraph (3) on behalf of the entire group, and an address to which any such notices or consents may be sent.

(b) **Composition of the Georgia Consolidated Group.** A Georgia consolidated group shall, for each year a consolidated return is filed, consist of all of the members of an affiliated group of corporations that file a consolidated return for Federal income tax purposes that are subject to Georgia income tax under Chapter 7 of Title 48 of the O.C.G.A; provided, however, that corporations that are immune from Georgia income tax under Federal law shall not be included in the proposed Georgia consolidated group.

(3) **Standard for Allowing Consolidated Returns; Tentative Permission; Revocation of Permission.**

(a) **Clearly and Equitably Reflect Income Attributable to Georgia.** Permission to file a Georgia consolidated return shall be granted by the Commissioner when the filing of such return will clearly and equitably reflect the income of the corporations attributable to property owned, business done, and income derived from sources by the members of the affiliated group in Georgia. A Georgia consolidated return will generally be deemed by the Commissioner to clearly and equitably reflect the income of the corporations included in the return attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia except as enumerated in subparagraphs (b) through (e) below.

(b) **Expenses Attributable to Related Members Not Included in Georgia Consolidated Group.** If any member of a group of corporations filing a Georgia consolidated return has interest expense attributable to indebtedness incurred in connection with an

ownership interest in one or more related members which are not included in the Georgia consolidated return, or other deductions from income related to an ownership interest in one or more related members which are not included in the Georgia consolidated return, the Commissioner may, as a condition to the granting of permission to file a consolidated Georgia return, require that such interest or other deductions be excluded in calculating the Georgia income of such member for purposes of the Georgia consolidated return. For purposes of this regulation, the term "related member" shall mean the same as it is defined in O.C.G.A. § 48-7-28.3.

(c) **Elimination of Members From Georgia Consolidated Group if Necessary to Clearly and Equitably Reflect Income Attributable to Georgia.** If the Commissioner reasonably determines that the inclusion of one or more otherwise eligible corporations in a Georgia consolidated return will not clearly and equitably reflect the income of the consolidated group attributable to Georgia, the Commissioner may, as a condition to the granting of permission to file a consolidated Georgia return by the other members of a Georgia consolidated group, require such corporations to file separate Georgia income tax returns or may require adjustment to the consolidated filing so that the consolidated return will clearly and equitably reflect the income of the Georgia consolidated group attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia.

(d) **Other Adjustments Necessary to Clearly and Equitably Reflect Income Attributable to Georgia.** The Commissioner may, as a condition to granting of permission to file a consolidated Georgia income tax return, require such other adjustments as he or she may reasonably determine are necessary in order for the consolidated return to clearly and equitably reflect the income of the Georgia consolidated group attributable to property owned in

Georgia, business done in Georgia, and income derived from sources within Georgia.

(e) **Denial of Request by Commissioner.** If, upon review of an application for permission to file a consolidated return, the Commissioner reasonably determines that the filing of a consolidated Georgia return as requested by an otherwise eligible affiliated group will not clearly and equitably reflect the income of the group attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia, and distortion cannot reasonably be eliminated by means of one or more of the adjustments authorized in this regulation, then the Commissioner may deny the application and all of the corporations shall be required to file separate Georgia income tax returns for such year. The Commissioner may also deny the application if the corporations fail to provide any information requested by the Commissioner that he has reasonably determined is needed to decide if such application should be granted, and in such event all of the corporations shall be required to file separate Georgia income tax returns for such year.

(f) **Tentative Permission.** If an application for permission to file a consolidated return is timely filed pursuant to paragraph (2), the Commissioner shall exercise his or her best efforts to fully consider such application and to either grant or deny it prior to the return's due date (including extensions), but any failure by the Commissioner to act on such application by such date shall not be deemed as a grant thereof or permit the filing of a consolidated return by the affiliated group. If, as of fifteen (15) days before the return's due date (including extensions), the Commissioner has requested but not yet received from the affiliated group any information that the Commissioner has reasonably determined is needed to decide if such application should be granted, or if the affiliated

group otherwise has not received a response to its timely filed application, the affiliated group may request and shall be entitled to receive tentative permission from the Commissioner to file a consolidated return, which permission may be conditioned on the affiliated group's agreement to provide any such requested information by a date certain acceptable to the Commissioner. If tentative permission is granted pending the receipt of information, the Commissioner shall review and take final action on the application, using the standards and criteria set forth in subparagraphs (a) through (e), within seventy-five (75) days after receipt of such information. In all other circumstances where tentative permission has been granted, the Commissioner shall take such final action no later than four months from the Commissioner's receipt of the first such consolidated return. If tentative permission has been granted pursuant to this subparagraph the affiliated group may by written consent allow the Commissioner additional time to complete his or her review and take final action. The Commissioner's tentative permission shall be revoked retroactively if the application is denied, and each member of the affiliated group shall, not later than sixty (60) days after the date of the Commissioner's written notice of denial, file an amended Georgia income tax return on a separate company basis for the affected tax period or periods and pay any additional tax and interest attributable thereto. If the Commissioner determines that any distortion can reasonably be eliminated by means of one or more adjustments to the consolidated return, including but not limited to the elimination of corporations from the consolidated group, the Commissioner may, in lieu of revoking his or her tentative permission, modify it retroactively by written notice specifying the adjustments that are required. Each member of the affiliated group shall, not later than sixty (60) days after the date of the Commissioner's written notice of modification, file either an amended consolidated Georgia income tax return or a separate company return for the affected tax period or periods that is

consistent with the adjustments mandated by the Commissioner and pay any additional tax and interest attributable thereto. If the Commissioner has tentatively approved an application but does not issue a written notice of denial, a written notice of approval, or a written notice of modification within the period prescribed in this subparagraph, such application shall be deemed to have been approved.

(g) **Prospective Revocation of Permission.** If the Commissioner determines at any time, using the standards and criteria set forth in subparagraphs (a) through (e), that the filing of a consolidated Georgia income tax return, for which permission previously was granted, will not clearly and equitably reflect the income of the affiliated group attributable to property owned in Georgia, business done in Georgia, and income derived from sources within Georgia, the Commissioner may revoke such permission prospectively for all tax periods beginning on or after the date of the Commissioner's written notice of revocation to the affiliated group. In lieu of revocation, the Commissioner may direct changes in the consolidated group or the methodology of filing the consolidated return as set forth in subparagraphs (a) through (d). This subparagraph shall also apply in any case in which an application was deemed to have been approved by the Commissioner pursuant to subparagraph (f).

(h) **Retroactive Revocation of Permission in Case of Material Omissions or Misstatements.** If the Commissioner grants permission to file a consolidated Georgia return but later determines that the application upon which such permission was based contained material omissions or misstatements of fact, whether intentional or otherwise, the Commissioner may revoke his or her permission retroactively by sending written notice of revocation to the affiliated group, recalculate the tax liabilities of each member

of the affiliated group on a separate company basis for all affected tax periods, and within the applicable limitations period assess any additional tax, interest, and penalties attributable thereto. This subparagraph shall also apply in any case in which an application was deemed to have been approved by the Commissioner pursuant to subparagraph (f).

(4) **Tax Years for Which Consolidated Returns Must Be Filed once Permission Is Granted.** If a Georgia consolidated group has received permission from the Commissioner to file a consolidated Georgia income tax return for any year, consolidated Georgia returns must be filed for all future tax years, except in the following circumstances:

(a) The Commissioner either revokes his or her prior permission to file a consolidated Georgia income tax return pursuant to paragraph (3) of this regulation or grants permission to cease filing such a return; or

(b) The affiliated group of corporations ceases to file a consolidated return for federal income tax purposes, whereupon the corporations must also cease filing a consolidated return for Georgia income tax purposes.

(5) **Separate Company Computation of Taxable Income or Loss.** Corporations that file a consolidated Georgia income tax return are required to consolidate separate company income or loss on a post-apportionment basis. This shall be accomplished by way of the following process:

(a) Each corporation within the Georgia consolidated group will prepare a separate company Georgia Form 600.

(b) The corporation will reflect its name and FEI number in the heading of the return.

(c) The corporation will begin on line 1 of Schedule 1 with its separate company federal taxable income or loss and will make the appropriate additions to or subtractions from taxable income on lines 2 and 4 of that Schedule. For purposes of this regulation, the separate company federal taxable income or loss shall be the taxable income or loss of the member included in the consolidated federal return but without the modifications listed in Internal Revenue Service Regulation 1.1502-12.

(d) If the corporation qualifies to apportion, it will complete Schedule 6 and Schedule 7 to determine the amount of separate company Georgia taxable income or loss to be reflected on line 7 of Schedule 1.

(e) If the corporation has a Georgia separate return limitation year loss, or "GSRLY" (see subparagraph (8)(e) of this regulation), that loss would be reflected on either line 6 of Schedule 1, or line 8 of Schedule 7 of Form 600.

(f) Intercompany transactions are not eliminated in this process of determining a corporation's separate company Georgia taxable income or loss. However, the Commissioner reserves the right to examine intercompany transactions, and to make appropriate adjustments, to ensure that taxpayers clearly reflect income attributable to controlled transactions or to prevent the avoidance of taxes with respect to such transactions.

(g) The separate company income or loss of each corporation in the Georgia consolidated group, as reflected on the separate company Form 600's, would then be consolidated on a group Form 600

and reflected on line 5 of Schedule 1 of that Form.

(h) Any consolidated Georgia net operating loss would be deducted on Schedule 1 line 6 to arrive at the consolidated group's Georgia taxable income or loss on line 7, and the group's income tax, if appropriate, on line 8.

(i) Schedule 3 of the Group Form 600 would be completed to reflect a computation of tax due or overpayment for the group.

(6) **Separate Company Computation of Net Worth Tax.** Corporations that file a consolidated Georgia income tax return are required to report and pay the net worth tax on a separate company basis.

(7) **Earning, Claiming and Assigning of Tax Credits.** The jobs tax credit, the investment tax credit, and any other tax credits which may be claimed against the Georgia corporate income tax must be calculated and claimed on a separate company basis. When the code specifies that the amount of the credit taken in any one taxable year be limited to an amount not greater than 50 percent (or another percentage) of the taxpayer's state income tax liability, such limit shall be computed on a separate company basis. For credit limitation purposes, net operating loss carryovers must be accounted for on a separate company basis. Assignment of Georgia income tax credits under the terms of O.C.G.A. § 48-7-42 is available within a consolidated Georgia return. In the event tentative permission is granted pursuant to subparagraph (3)(f), the members of the consolidated group may make a new assignment or may change such assignment provided such new assignment or change is made on the returns which are required to be filed not later than sixty (60) days after the date of the Commissioner's written notice of denial or modification.

Credit Example:

Numbers Per Separate Company Calculation	**Georgia Parent Co**	**Sub Co A**	**Sub Co B**	**Sub Co C**
Georgia Taxable Income	50,000	(16,000)	140,000	60,000
Georgia Tax Liability (6%)	3,000	-	8,400	3,600
Georgia Income Tax Credits Generated in Current Year:				
Retraining Tax Credit (limited to 50% of income tax liability)	-	6,000	-	2,500
Georgia Tax Credits Carried Forward:				
Investment Tax Credit (limited to 50% of income tax liability)	7,250	-	-	-
Retraining Credits Assigned: *				
From Sub Co A	1,500	(6,000)	4,500	-
From Sub Co C	-	-	-	-
Retraining Credit Limitation	1,500	-	4,200	1,800
Investment Credit Limitation	1,500	-		
Total Tax Credits Utilized in Current Tax Year	3,000	-	4,200	1,800
Remaining Tax Liability**	-	-	4,200	1,800
Tax Credits to be Carried Forward:				
Investment Tax Credit	5,750	-	-	-

Retraining Tax Credit	-	-	300	700

Consolidated Tax Calculation:

Taxable Income:		**Tax Calculation:**	
Georgia Parent	50,000	Consolidated Taxable Income	234,000
Sub Co A	(16,000)	Georgia Tax Liability @ 6%	14,040
Sub Co B	140,000	Combined Tax Credits Utilized***	9,000
Sub Co C	60,000	Balance of Georgia Tax	5,040
Consolidated Taxable Income	234,000		

* Credits assignment must be made on the separate company tax returns, with a detailed summary provided on a schedule attached to the consolidated tax return.

** The remaining tax liability is due to the limitations applied to the credits. Georgia Parent Co was able to utilize its carryforward Investment Tax Credit up to 50% of its separate company tax liability and also to utilize the assigned Retraining Tax Credit from Sub Co A for the remaining 50% of its tax liability. The remaining balance of the Retraining Tax credit generated by Sub Co A is then assigned to Sub Co B, with the unused portion available to Sub Co B as a carryforward credit. Sub Co C is able to utilize its Retraining Tax Credit up to 50% of its income tax liability, with the remaining balance kept as a carryforward credit against future liability. Please note that credits may only be assigned in the year generated and assignment must be made by the due date of the return (including extensions), thus carryforward credits are not assignable.

***In no case may the combined tax credits utilized offset more

than 100% of the consolidated tax liability. Such excess shall be carried forward by the appropriate separate companies provided it is otherwise eligible for carryforward.

(8) **Consolidated Return Net Operating Loss Deduction.** A consolidated Georgia net operating loss carryforward or carryback shall be allowed as a deduction on the Georgia consolidated return of an affiliated group under the following rules:

(a) The Georgia consolidated net operating loss for a taxable year shall include the separate company federal taxable income or loss of each member corporation, with the adjustments provided for in subsection (b) of O.C.G.A. § 48-7-21 and O.C.G.A. § 48-7-28.2, and allocated and apportioned as provided in O.C.G.A. § 48-7-31. In calculating the separate company income or loss of each member corporation, no deduction will be taken for either federal or Georgia net operating losses from other years;

(b) "Georgia separate return year" as used in this regulation means a tax year of a corporation for which it files a separate return with Georgia or for which it joins in the filing of a consolidated Georgia return by another group;

(c) "Georgia separate return limitation year", or "GSRLY", as used in this regulation means any Georgia separate return year of a corporation or of a predecessor of a corporation;

(d) A consolidated Georgia Net Operating Loss deduction shall consist of any consolidated net operating loss (per subparagraph (a)) of the group that is carried forward or carried back to a consolidated year, plus any net operating loss incurred by members of the group in Georgia separate return years which may be carried over to that year. However, a net operating loss incurred by a

member corporation in a Georgia separate return limitation year shall be subject to the limitation set forth in subparagraph (e);

(e) Net operating losses carried to a consolidated return year from a Georgia separate return limitation year (GSRLY) may be used to reduce the group's income only to the extent of the income contributed by the GSRLY member. This computation shall be performed first and then any consolidated loss of the group would be applied against any remaining income of the group. (See Example 1)

Example 1

Company	A	B	C	Consolidated Total
12/31/01	(75,000) **(1)**	25,000	10,000	Separate Company Returns Filed
12/31/02	(50,000)	20,000	15,000	Loss (15,000) **(2)**
12/31/03	50,000	20,000	15,000	85,000
Less:NOL(GSRLY)	(50,000) **(3)**			
	-0-	20,000	15,000	Profit after GSRLY 35,000 **(4)**
Consolidated NOL from 12/31/02				Carryforward (15,000) **(5)**
Consolidated Total Profit 12/31/03				20,000 **(6)**
Total GSRLY Carryforward Company "A"	(25,000) **(7)**			

Explanation For Example 1:

1. The year 12/31/01 is a Georgia separate return year, and the ($75,000) loss of company A is limited in subsequent years to the income of company A. The years 12/31/02 and 12/31/03 are consolidated post apportionment years.

2. The 12/31/02 tax year reflects a ($15,000) consolidated loss which may be carried forward.

3. In 12/31/03, the first consolidated profitable year, any GSRLY loss applies first. Therefore, ($50,000) of company A's loss from 12/31/01 is used against company A's income in 12/31/03.

4. The reduced income of the group for 12/31/03 is $35,000.

5. The consolidated loss of ($15,000) from 12/31/02 which was carried forward may now be deducted.

6. The reduced taxable income is $20,000.

7. Company A has a remaining GSRLY loss of $25,000 which may be carried forward;

(f) If a Georgia consolidated net operating loss can carry forward to a Georgia separate return year of a corporation which was a member of an affiliated group in the year in which the loss arose, then the portion of the net operating loss attributable to such corporation shall be apportioned to such corporation under the provisions of subparagraph (g) and shall be a net operating loss carryover to such Georgia separate return year. However, such portions shall not be included in the consolidated net operating loss carryovers to the equivalent consolidated return year;

(g) The portion of a Georgia consolidated net operating loss attributable to a member of a group is the consolidated net operating loss multiplied by a fraction, the numerator of which is the separate net operating loss of such corporation, and the denominator of which is the sum of the separate net operating losses of all members of the group in the year in which such losses were incurred. See example 2. The separate net operating loss of such corporation

and of each member as is mentioned in this subparagraph shall be computed as follows:

1. The separate net operating loss for the taxable year that this regulation is first applicable to and each year thereafter shall be computed on a post apportionment basis as is provided in paragraph (5).

2. The separate net operating loss for each taxable year prior to the taxable year that this regulation is first applicable to shall be computed as follows:

(i) Income or loss subject to apportionment pursuant to O.C.G.A. §48-7-31(d). When the consolidated group consolidated its income or loss subject to apportionment and then applied the consolidated group's apportionment percentage to the income or loss subject to apportionment (pre-apportionment basis), the portion of the separate net operating loss, attributable to income or loss subject to apportionment, of each separate corporation shall be computed by applying the consolidated group's apportionment percentage to the separate corporation's income or loss subject to apportionment.

(ii) Income or loss subject to allocation pursuant to O.C.G.A. §48-7-31(c). The portion of the separate net operating loss, attributable to income or loss subject to allocation, of each separate corporation shall be equal to its separate corporation income or loss subject to allocation.

Example 2

Company	A	B	C	Total
12/31/02 SNTI* (SNOL**)	(5,000)	2,000	(1,000)	(4,000)
Gains $2,000	-\-		-\-	

Losses ($6,000)	(6,000)		(6,000)	
Net Loss (4,000)	= .8333	-0-	= .1667	
	X (4,000)		X (4,000)	
NOL	($3,333)	-0-	($667)	(4,000)

*SNTI=Separate Net Taxable Income
**SNOL=Separate Net Operating Loss

Explanation For Example 2, Member Leaving Group:

Corporation A, B and C file a consolidated return in 12/31/02. On 1/1/03 Corporation C is sold to Corporation D. This example above computes Corporation C's loss carryforward to its new consolidated group and the loss carryforward of the original group, Corporation A&B. Corporation C has a loss carryforward of ($667) and the remaining group (Corporation A&B) has a loss carryforward of ($3,333);

(h) If a corporation ceases to be a member during a consolidated return year, any Georgia consolidated net operating loss carryover from a prior tax year must first be carried to such Georgia consolidated return year even though all or a portion of the Georgia consolidated net operating loss giving rise to the carryover is attributable to the corporation which ceases to be a member. To the extent not absorbed in such consolidated return year, the portion of the consolidated net operating loss attributable to the corporation ceasing to be a member shall then be carried to the corporation's first Georgia separate return year;

(i) The provisions of § 108 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal

Revenue Code § 108 provisions shall be applied in the same manner as provided in the Internal Revenue Code and related regulations (including those regulations relating to how to apply Internal Revenue Code § 108 to consolidated returns). The reduction in the Georgia net operating losses shall be determined by applying the Georgia apportionment percentage for the year of the discharge to the amount of the Internal Revenue Code § 108 net operating loss reduction determined pursuant to this regulation. A determination under the federal consolidated regulations that the separate entity has an amount of discharge of indebtedness income and or is required to reduce tax attributes shall also apply for Georgia purposes.

2. The reduction of tax attributes provided in paragraph (a)(4) of Internal Revenue Service Regulation § 1.1502-28 shall be applied in the same manner as such regulation requires except that the excluded discharge of indebtedness income not applied to reduce the tax attributes attributable to the member shall be used to reduce the Georgia consolidated tax attributes instead of the federal consolidated tax attributes.

3. Any elections, with respect to the order of the tax attribute reductions, made for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations, shall also apply for Georgia purposes.

(j) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 381, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations (including those regulations relating to how to apply Internal Revenue Code § 381 to consolidated returns).

(k) The provisions of § 382 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 382 limitation shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. Such limitation shall be computed on a separate entity basis even when a consolidated federal income tax return is filed. Except as otherwise provided in this regulation, the Internal Revenue Service Regulations regarding how to apply Internal Revenue Code § 382 when a consolidated return is filed and paragraph (f) of Internal Revenue Service Regulation § 1.382-8 shall not apply for Georgia purposes.

2. A determination that an ownership change has occurred for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) shall apply for Georgia purposes.

3. Adjustments to prevent duplication of value contained in the Internal Revenue Code § 382 regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) apply for Georgia purposes. However, the election to restore value provided in paragraph (c) of Internal Revenue Service Regulation § 1.382-8 shall not be available.

4. Whenever an ownership change occurs, an Internal Revenue Code § 382 limitation will apply to all Georgia pre-change losses that are carried over to a post-change year. “Pre-change years” end on or before the date of an ownership change, while “post-change years” end after the date of an ownership change. In a post-change

year, the limitation on the use of any pre-change year Georgia net operating losses shall be determined by applying that post-change year's apportionment percentage to the Internal Revenue Code § 382 limitation for that post-change year determined pursuant to this regulation.

5. The Internal Revenue Code § 382 limitation does not reduce the total amount of pre-change Georgia net operating losses available for carry forward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

6. If there is any unused Internal Revenue Code § 382 limitation for Georgia purposes in a post-change year, the following year's limitation shall be increased by the excess amounts determined for Georgia tax purposes in a manner similar to Internal Revenue Code § 382(b)(2).

7. In the event the Internal Revenue Code § 382 limitation and the GSRLY limitation both apply to a net operating loss, the net operating loss shall be subject to both the GSRLY limitation and the Internal Revenue Code § 382 limitation. For example, a taxpayer has a net operating loss of $1000. The Internal Revenue Code § 382 limitation only allows $500 of the loss to be used. The GSRLY limitation only allows $200 of the loss to be used. $200 of the loss is allowed to be used. Conversely, a taxpayer has a net operating loss of $1000. The Internal Revenue Code § 382 limitation only allows $200 of the loss to be used. The GSRLY limitation only allows $500 of the loss to be used. $200 of the loss is allowed to be used.

(l) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 384, as they apply to Georgia net

operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. The adjustment for such Internal Revenue Code Section shall be determined on a separate entity basis. The limitation on offsetting losses against any recognized built in gains which are allocated to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains. The limitation on offsetting losses against any recognized gains which are apportioned to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains multiplied by the apportionment percentage for the recognition period taxable year.

(m) For purposes of subparagraphs (8)(i) through (8)(l), the Georgia net operating loss of each separate member for the applicable year shall be computed as follows:

1. If the net operating loss is carried to a consolidated return year from a Georgia separate return limitation year (GSRLY), the Georgia net operating loss shall be the separate Georgia net operating loss of the member for the applicable year.

2. If the net operating loss is carried to a consolidated return year from a year other than a Georgia separate return limitation year (GSRLY), the portion of a Georgia consolidated net operating loss attributable to a member of a group shall be computed in the same manner as provided in subparagraph (g) of this paragraph.

(n) A Georgia consolidated net operating loss may not be carried back to a Georgia separate return limitation year.

(o) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under paragraph (10) of subsection (b) of O.C.G.A. § 48-7-21, the taxpayer may file

an amended return within the time period prescribed by O.C.G.A. § 48-7-21 or alternatively may file an "application for a tentative carryback adjustment of the taxes" within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and examination. The Commissioner may disallow, without further action, any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest. If the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

(p) Complete schedules must be submitted for all net operating losses carried forward to or from consolidated returns. Schedules must contain information to substantiate which corporations incurred net operating losses and the age of the net operating losses.

(9) **Transition Rules for Net Operating Loss Carryforward.**

(a) Except as provided in subparagraphs (9)(b) and (9)(c), any corporation which has received permission to join in the filing of a Georgia consolidated income tax return and which has joined in the filing of a Georgia consolidated income tax return, in the first taxable year beginning prior to January 1, 2002, will be eligible to carry forward to a consolidated return year the net operating loss shown on the returns, filed and accepted by the Department, without being subject to the GSRLY limitations as described in subparagraph (8)(e).

(b) A corporation which filed as a party to a Georgia consolidated return in the first taxable year beginning prior to January 1, 2002 and which will not be included in the Georgia consolidated return in the first taxable year beginning on or after January 1, 2002 shall be treated as ceasing to be a member of that group for the first taxable year beginning prior to January 1, 2002 as described at subparagraph (8)(h). The separate company Georgia net operating loss for the corporation, if any, will then be determined according to subparagraphs (8)(f) and (8)(g).

(c) The separate company net operating loss carryforward for a corporation coming into the group, that did not join in the filing of the Georgia consolidated return for the group in the first taxable year beginning prior to January 1, 2002 or which has joined in the filing of a Georgia consolidated income tax return of another group in the first taxable year beginning prior to January 1, 2002, shall be treated pursuant to the terms of subparagraph (8)(e). A corporation which has joined in the filing of a Georgia consolidated income tax return of another group in the first taxable year beginning prior to January 1, 2002 shall be treated as ceasing to be member of that group for the first taxable year beginning prior to January 1, 2002

as described at subparagraph (8)(h). The separate company Georgia net operating loss for the corporation, if any, will then be determined according to subparagraphs (8)(f) and (8)(g).

(10) **Effective Date.** This regulation will apply to taxable years beginning on or after January 1, 2005. Taxable years beginning on or after January 1, 2002 and before January 1, 2005 will be governed by the prior provisions of this regulation. Taxable years beginning before January 1, 2002 will be governed by Regulation 560-7-3-.06(4) as it was in effect at that time.

Authority O.C.G.A. §§ 48-2-12 and 48-7-21.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-4
NET TAXABLE INCOME (INDIVIDUAL)

560-7-4-.01
Net Taxable Income (Individual)

The purpose of proposed rule 560-7-4-.01 is to provide guidance regarding the administration of O.C.G.A. § 48-7-27, which provides for the computation of taxable income of an individual.

Paragraph (1) references the statute used in computing the taxable net income of an individual.

Paragraph (2) specifies additions to “net income.”

Paragraph (3) specifies adjustments for Net Operating Losses.

RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-4
NET TAXABLE INCOME (INDIVIDUAL)

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560-7-4-.01 Net Taxable Income (Individual). Amended.

~~(1) The Georgia taxable net income of an individual for taxable years beginning on or after January 1, 1971 is the Federal adjusted gross income for such years less either the total itemized deductions, or the standard deduction claimed on Federal return (resulting in an amount which is hereinafter referred to as "net income"), with the adjustments described in the following subsections:~~

~~(a) There shall be added to such "net income" those items of income received by the individual which are excluded from Federal income tax but which are subject to Georgia income tax; as for example, interest on bonds of States other than Georgia, and their political subdivisions; and there shall be deducted from "net income" those items thereof which are includible for Federal income tax, but which are exempt from Georgia income tax. However, the amount of such deduction shall itself be decreased by expense attributable to such income. [For example, an individual has included in his Federal adjusted gross income, interest received on U.S. bonds in the amount of $4500. He also claimed a deduction for expense connected with such income of $200. The adjustment required by this subsection would be $4300.]~~

~~(b) There shall be added back to "net income" the amount of all income taxes deducted therefrom on taxpayer's Federal income tax return for the taxable year. And such "net income" shall be reduced in an amount equal to any refund of income tax included therein.~~

~~(c) If such "net income" includes gain from the sale or other disposition of property acquired prior to January 1, 1931, an adjustment may be made to such "net income" in an amount determined by recomputing such gain using as the basis, the cost or January 1, 1931 fair market value, whichever is greater, less depreciation allowed or allowable; or if such "net income" includes loss from the sale or other disposition of property acquired prior to January 1, 1931, an adjustment may be made to such "net income" in an amount determined by recomputing such loss using as the basis, the cost or January 1, 1931 fair market value, whichever is lower, less depreciation allowed or allowable.~~

~~1. Any adjustment to basis will be permitted only if it can be shown that failure to adjust the basis will result in income being included in the current return which has already been taxed by the State of Georgia on returns for years beginning before January 1, 1971. A change in basis will be required if the basis deducted on the return results in a deduction of an amount that had previously been deducted from income on a Georgia return prepared under tax laws in effect for years beginning prior to January 1, 1971.~~

~~(d) There shall be added to "net income" the amount of deductions reflected therein which resulted from transactions occurring in years in which the individual was not subject to Georgia income tax. Such deductions shall mean, but not be limited to, contribution, capital loss and net operating loss carry-overs.~~

~~1. Appropriate adjustment shall be made to such "net income" for a net operating loss carry-over to years beginning on or after January 1, 1971, the effect of which shall be to allow such~~

~~deductions as would have been allowable had Section 92-3109(m) of the Georgia Code continued in effect.~~

~~2. For any taxable year beginning on or after January 1, 1971, in which the taxpayer claims a net operating loss deduction on his Federal income tax return, the amount of such deduction shall be added back to "net income". There shall be allowed as a separate deduction from "net income" so computed an amount equal to the aggregate of the Georgia net operating loss carry-overs to such year, plus the Georgia net operating loss carry-backs to such year.~~

~~3. For any taxable year beginning on or after January 1, 1971, in which the taxpayer has a Federal net operating loss, the Georgia net operating loss for such taxable year shall be computed by making the same adjustments to the Federal net operating loss that are made to Federal adjusted gross income to determine Georgia taxable net income; i.e., the adjustments provided in Sections 93-3197(b)(1), (2), (3), (4), (5), (6), (7) and (8), and in the case of partnerships, individuals, trusts and estates doing business both within and without Georgia, by allocating to Georgia only the amount of the loss attributable to operations within Georgia, in the manner of Section 92-3113 of the Georgia Income Tax Act, as amended. The term "Georgia net operating loss" shall mean the loss computed as provided in this sub-paragraph. In the event the net Georgia adjustments completely offset the federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the Federal net operating loss shall constitute Georgia taxable net income.~~

~~4. The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in Section 172 of the Internal Revenue Code of 1954; provided, however, any Georgia net operating loss incurred in any taxable year beginning on or after January 1, 1971, shall not be carried back to a taxable year which began before January 1, 1971, and provided further, where~~

~~the Georgia net operating loss would otherwise be carried back under the provisions of the Internal Revenue Code of 1954 to a taxable year that began before January 1, 1971, such loss shall be carried back to the earliest taxable years beginning on or after January 1, 1971, and then carried over to the taxable years specified in Section 172 of the Internal Revenue Code of 1954. The terms "Georgia net operating loss carry back" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss carried back or carried over in the manner and for the number of years as provided in this sub-paragraph.~~

~~5. In the event the taxpayer is entitled to a refund of income taxes by reason of a net operating loss carry back, an application for tentative carry back adjustment or claim for refund will be filed in accordance with Chapter 560-7-3-.06(3)(e) and (f) of the Rules and Regulations of the State of Georgia.~~

~~(e) Appropriate adjustment shall be made to reduce "net income" for items of income and/or to increase "net income" for deductions which have been reflected on Georgia returns in prior years, but which are included in "net income" for years beginning on or after January 1, 1971. The adjustments authorized under this Section are permitted only when the income which is included in the Federal return has previously been reported on a Georgia return, or a deduction allowed by the Internal Revenue Code of 1954 has already been deducted on taxpayer's Georgia return prepared under Georgia Law in effect for tax years beginning before January 1, 1971. This section does not require that each item of income and expenses be adjusted so that over the period of an individual's life, during which he is subject to Georgia Law and the Federal Internal Revenue Code, all income and deductions are brought into complete harmony. The section only prohibits the duplication of specific income and prohibits duplication of a deduction which already has been allowed on the Georgia return. It should be noted that this section is concerned with duplications between taxable years beginning prior to January 1, 1971 and those years beginning on and after January 1, 1971, wherein income was reported to the~~

~~State of Georgia. No other adjustments will be made under this section, regardless of the fact that prior Georgia Law and the Federal Internal Revenue Code did not tax the same income in the same manner and did not allow the same deductions.~~

~~(f) There shall be added to "net income" the amount of any unrecognized gain under Sections 1033 and 1034 of the Internal Revenue Code of 1954 on the sale or exchange of real or personal property located in Georgia, in the circumstance that the replacement property is not located in Georgia.~~

~~(g) The "net income" shall be adjusted for items of income received by an individual, which items are exempt for State income tax by Federal or Georgia Statute other than their revenue codes, or by treaty; for example, Georgia Teacher's and Georgia Employee's retirement income.~~

~~(h) There shall be deducted from such "net income" an allowance for personal exemption and credit for dependents as specified in Section 92-3106 as amended.~~

(1) The Georgia taxable net income of an individual shall be computed pursuant to O.C.G.A. § 48-7-27.

(2) There shall be added to "net income" the amount of deductions reflected therein which resulted from transactions occurring in years in which the individual was not subject to Georgia income tax. Such deductions shall include but not be limited to, contribution, capital loss and net operating loss carryovers.

(3) Net Operating Losses

(a) An appropriate adjustment shall be made to such "net income" for a net operating loss carryover.

(b) For any taxable year in which the taxpayer claims a net

operating loss deduction on the Federal income tax return, the amount of such deduction shall be added back to "net income". There shall be allowed as a separate deduction from "net income" an amount equal to the aggregate of the Georgia net operating loss carryovers to such year, plus the Georgia net operating loss carrybacks to such year.

(c) For any taxable year in which the taxpayer has a Federal net operating loss, the Georgia net operating loss for such taxable year shall be computed by making the same adjustments to the Federal net operating loss that are made to Federal adjusted gross income to determine Georgia taxable net income. In the case of nonresident individuals, trusts, and estates doing business both within and without Georgia, the loss attributable to operations within Georgia shall be computed as provided in O.C.G.A. § 48-7-30. The term "Georgia net operating loss" shall mean the loss computed as provided in this sub-paragraph. In the event the net Georgia adjustments completely offset the federal net operating loss, there shall be no Georgia net operating loss for the taxable year, and any excess of net Georgia adjustments over the Federal net operating loss shall constitute Georgia taxable net income.

(d) The procedural sequence of taxable years to which a Georgia net operating loss may be carried back or carried over, and the number of years for which a net operating loss may be carried back or carried over, shall be the same as provided in the Internal Revenue Code. The terms "Georgia net operating loss carryback" and "Georgia net operating loss carryover" shall mean the Georgia net operating loss carried back or carried over in the manner and for the number of years as provided in this subparagraph.

(e) In the event the taxpayer elects to forgo the carryback period for the federal net operating loss as allowed under the Internal Revenue Code, the taxpayer shall also forgo the carryback period for Georgia purposes. If the taxpayer does not elect to forgo the carryback period for the federal net operating loss, the election to forgo the net operating loss period shall not be allowed for Georgia

purposes. If the taxpayer does not have a federal net operating loss, the taxpayer may make an irrevocable election to forgo the carryback period for the Georgia net operating loss, provided that an affirmative statement is attached to the Georgia return for the year of the loss. Such election must be made on or before the due date for filing the income tax return for the taxable year wherein the loss was incurred, including any extensions which have been granted.

(f) In the event the taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback, an application for tentative carryback adjustment or claim for refund will be filed in accordance with O.C.G.A. § 48-7-21(b)(10)(E). The taxpayer may file an amended return within the time period prescribed in O.G.C.A. § 48-7-21(b)(10)(E) or alternatively may file an "application for a tentative carryback adjustment of the taxes" within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and the examination. The Commissioner may disallow without further action any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest. If the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may

assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

(g) The provisions of Sections 108, 381, 382, and 384 of the Internal Revenue Code of 1986, as amended, as they relate to net operating losses also apply for Georgia purposes. These shall be applied as provided in O.C.G.A. § 48-7-21(b)(10)(D) and the regulations thereunder.

Authority O.C.G.A. §§ 48-2-12 and 48-7-27.

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-7
TAXES

560-7-7-.03
Corporations: Allocation and Apportionment of Income.

The purpose of proposed Rule 560-7-7-.03 is to provide guidance regarding the administration of O.C.G.A. § 48-7-31, which provides for the taxation of corporations and the allocation and apportionment of income.

Paragraph (1) provides the rules with respect to what constitutes doing business.

Paragraph (2) provides the general rules with respect to allocation and apportionment of income.

Paragraph (3) provides the rules with respect to the allocation of real property investment income, allocation of intangible property investment income, and allocation of gain or loss on sale of investment property.

Paragraph (4) provides the rules with respect to the apportionment of income for a corporation whose net business income is principally derived from the manufacture, sale, or lease of tangible personal property. Included are rules with respect to the property factor, payroll factor, gross receipts factor, and the weighting of such factors.

Paragraph (5) provides the rules with respect to the apportionment of income for a corporation whose net business income is principally derived from business other than the manufacture, sale, or lease of tangible personal property. Included are rules with respect to the property factor, payroll factor, gross receipts factor, and the weighting of such factors. Also, included are rules with respect to how to determine which receipts are attributable to customers within this state and which are attributable to this state's marketplace. It provides rules with respect to departures from the standard allocation and apportionment rules. It provides special rules with respect to petroleum pipeline companies and motor carriers.

Paragraph (6) provides the effective date of the rule.

RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION

CHAPTER 560-7-7
TAXES

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560-7-7-.03 Corporations: Allocation and Apportionment of Income.

~~(1) **What Constitutes Doing Business.** A corporation will be considered to be doing business within this state if it performs acts or consummates transactions within this state which result in financial profit or gain, or if it engages within the state in activities or transactions for the purpose of financial profit or gain. A corporation will be considered to be engaged in an activity in this state whose agent, salesman, or other representative in whatever capacity, engages in solicitation, demonstration, taking of orders, collection activities, or any other activity which results in the shipment of goods to customers and/or receipts from customers in this state. A corporation will be considered to be owning property or doing business in Georgia whenever the corporation is a partner, whether limited or general, in a partnership which owns property or does business in Georgia. A corporation may be considered not to be doing business in this state, however, if it engages only in isolated or occasional activities which are incidental to the corporation's income producing activities conducted elsewhere, or incidental to a transaction consummated elsewhere.~~

~~(2) **Allocation and Apportionment of Income.** When a corporation's entire net income is derived from owning property or~~

~~doing business in this state, the entire net income shall be taxable by this state. A corporation engaged in an activity or transaction within this state, whose net income is derived from owning property or doing business both within and without the state, shall be taxed upon that part of the net income attributable to this state. To arrive at net income subject to apportionment, there shall be excluded income subject to allocation as provided in paragraph (3) of this regulation.~~

~~(3) **Allocation of Income.** O.C.G.A. Section 48-7-31(c) applies only to income from property held solely for investment. All expense connected with earning such investment income, such as interest on money borrowed to pay for such property, ad valorem and other taxes on such property, and all other expense connected with holding and owning such property shall be deducted from the gross investment income. The net investment income is not subject to apportionment.~~

~~(a) **Real property investment.** If the investment property is real estate located within the state, the entire net investment income from such real property shall be allocated to Georgia. If such real estate is situated outside the state, the entire net investment income therefrom shall be allocated outside Georgia.~~

~~(b) **Intangible property investment.** If the investment property is intangible, and the corporation is a domestic corporation, or a domesticated foreign corporation, or an undomesticated foreign corporation having its principal office in Georgia, the entire net investment income from such intangible property shall be allocated to Georgia; or if such intangible property was acquired as a result of business done or property owned in Georgia, the entire net investment income therefrom shall be allocated to Georgia.~~

~~(c) **Allocation of investment income.** Net gains from the sale or other disposition of any such investment property, and from other property held for investment and not held, owned or used in~~

~~connection with the trade or business of the corporation, nor held for sale in the regular course of the trade or business of the corporation, shall be allocated to Georgia if the investment property is real estate situated in Georgia, or tangible personal property located in Georgia, or intangible property the net investment income from which is allocated to Georgia hereunder; otherwise, such net gain shall be allocated outside the state.~~

~~(4) **Apportionment of Income; Tangible Personal Property.** Any corporation whose income is derived from the manufacture, production, sale or lease of tangible personal property shall be taxed upon that portion of its net income attributable to this state, determined by use of a three factor apportionment formula. The three factors in the apportionment formula are the property factor, the payroll factor, and the gross receipts factor. The method of apportioning income using ratios relating to property, payroll, and gross receipts shall be hereinafter referred to as the three factor formula.~~

~~(a) **Property Factor.**~~

~~1. **General Rule.** The property factor of the three factor formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. The term "real and tangible personal property" includes, but is not limited to, land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency. Property used in connection with the production of income subject to allocation shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of income subject to allocation shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall~~

include the average value of property includable in the factor. For purposes of these regulations, the term "income subject to allocation" shall mean such income as described in O.C.G.A. Section 48-7-31(c).

2. **Property used for the production of business income.** Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event.

3. **Consistency in reporting.** In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

4. **Denominator.** The denominator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business.

5. **Numerator.** The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of its trade or business. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment which is located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor.

6. **Valuation of owned property.**

(i) **Original Cost; defined.** Property owned by the taxpayer shall be valued at its original cost. As a general rule, "original cost" is deemed to be the original basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. Depletable property shall be valued at its original cost less any depletion taken for federal tax purposes.

~~(ii) **Inventory.** Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.~~

~~(iii) **Gift or inheritance.** Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.~~

~~7. **Valuation of rented property.**~~

~~(i) **General rule.** Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when the subrents constitute business income because the property which produces the subrents is used in the regular course of a trade or business of the taxpayer when it is producing such income. Accordingly, there is no reduction in its value.~~

~~(ii) **Annual rental rate; defined.** "Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.~~

~~(iii) **Annual rent.** "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:~~

~~(I) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.~~

~~(II) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.~~

~~(iv) **Royalties.** Annual rent does not include royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.~~

~~(v) **Leasehold improvements.** For purposes of the property factor, leasehold improvements shall be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.~~

~~(vi) **Where no rent is charged.** If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a~~

~~nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.~~

~~8. **Averaging property values.** As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Commissioner may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.~~

~~(b) **Payroll factor.**~~

~~1. **General rule.** The payroll factor of the three factor formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.~~

~~2. **Method of accounting.** The total amount of compensation is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes. The compensation of any employee for activities in connection with the production of income subject to allocation shall be excluded from the factor.~~

~~3. **Compensation.** The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid directly or indirectly to employees for personal services. Payments made to an independent contractor or any other person not properly~~

~~classifiable as an employee are excluded. Only amounts paid directly or in- directly to employees are included in the payroll factor. Amounts considered paid include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the Federal Internal Revenue Code.~~

~~4. **Employee.** The term "employee" means any officer of a corporation or any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he performs services subject to control by an employer both as to what services shall be performed and as to how they shall be performed. Some of the usual characteristics which may be used to identify an employee, but which need not be present in all cases, are that the employer has the right to discharge the employee and that the employer furnishes the tools or materials and a place in which to perform the work. How compensation is paid by the employer to an employee for personal services, whether directly, indirectly, or through a third party, and what the employee is called, whether partner, agent, or independent contractor, is immaterial. The existence of an actual employer-employee relationship is the fact that determines inclusion of compensation in the payroll ratio. Whether the employer-employee relationship exists will be determined in doubtful cases upon an examination of the particular facts of each case. In general, an individual is an employee for payroll factor purposes if he has the status of an employee under common law rules.~~

~~5. **Modification of compensation.** In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid that was used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.~~

~~6. **Denominator.** The denominator of the payroll factor is the total compensation paid everywhere during the tax period.~~

~~7. **Numerator.** The numerator of the payroll factor is the total amount of compensation paid by the taxpayer in this State during the tax period.~~

~~8. **Compensation paid in this state.** Compensation is paid in this state if any one of the following tests is met:~~

~~(i) The employee's service is performed entirely within this state; or~~

~~(ii) The employee's service is performed both within and outside this state and the service performed outside this state is incidental to the employee's service within this state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or~~

~~(iii) Some of the service is performed in this state and the base of operations or the place from which the service is directed or controlled is in this state; or~~

~~(iv) Some of the service is performed in this state and the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state. In each of the above four tests, the employee's total compensation is determined to be Georgia compensation and is included in the numerator of the payroll factor. The term "base of operations" means the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of trade or business at some other point or~~

points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(c) **Gross receipts factor.**

1. **General rule.** O.C.G.A. Section 48-7-31(d)(2)(C) provides that the gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. For purposes of the three factor formula provided for at O.C.G.A. Section 48-7- 31(d)(2) and known as the (d)(2) formula, the term "gross receipts" means all gross receipts derived by the taxpayer from products shipped or delivered to customers in the regular course of its trade or business.

2. **Gross receipts; combination goods and services.** Where a company's receipts are derived from products which are a combination of goods and services, (d)(2) formula "gross receipts" shall include the charge for the services, so long as such receipts are derived from activity which represents the business purpose of the taxpayer. The (d)(2) term "gross receipts" includes any income from sources related to products shipped and delivered to customers in the regular course of a taxpayer's trade or business.

3. **Gross receipts; manufacturing.** In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, all gross receipts from the sale of such goods or products, or other property of a kind which would properly be included in inventory of the taxpayer if on hand at the close of the tax period and which are held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, are included in the gross receipts factor. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time price

~~differential charges incidental to such sales. Federal and state excise taxes, including sales taxes, shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.~~

~~4. **Gross receipts; fixed-fee contracts.** In the case of cost plus fixed fee contracts, such as the operation of a government owned plant for a fee, gross receipts shall include only the fee charged for the operation of the plant.~~

~~5. **Modification of gross receipts.** In filing returns with Georgia, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the gross receipts factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.~~

~~6. **Denominator.** The denominator of the gross receipts factor shall include the total gross receipts derived by the taxpayer from products shipped or delivered to customers in the regular course of its trade or business.~~

~~7. **Numerator.** The numerator of the gross receipts factor shall include the gross receipts attributable to this state and derived by the taxpayer from products shipped or delivered to customers in this State in the regular course of its trade or business.~~

~~8. **Sales of tangible personal property in this state.**~~

~~(i) Gross receipts from the sales of tangible personal property are in this state if the property is delivered or shipped to a customer within this state regardless of the f.o.b. point or other conditions of sale. However, when property is picked up by an out-of-state customer at the taxpayer's place of business in Georgia for transport out of the state, the gross receipts from such sales are not in this state. The actual place of transfer and the manner by which the property arrives at its eventual destination is not material.~~

~~(ii) Property shall be deemed to be delivered or shipped to a customer within this state if the recipient is located in this state, even though the property is ordered from outside this state. Additionally, when property is picked up by a Georgia customer at the taxpayer's out-of-state place of business for transport to this state, the gross receipts from such sales are in this state. The actual place of transfer and the manner by which the property arrives at its eventual destination is not material.~~

~~(iii) Property is delivered or shipped to a customer within this State if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.~~

~~(iv) The term "customer within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the customer, delivers to or has the property shipped to the ultimate recipient within this state.~~

~~(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, gross receipts from the sales are in this state.~~

~~(d) **Georgia Apportionment Ratio.** The three apportionment factors, determined separately above, shall be weighted 25 percent to the property factor, 25 percent to the payroll factor, and 50 percent to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, the weighted percentage for the other will be 33-1/3 percent and the weighted percentage for the gross receipts factor will be 66-2/3 percent. If the denominator for the gross receipts factor is zero, the weighted percentage for the property and payroll factors will be 50 percent each. If the denominators for any two factors are~~

~~zero, the weighted percentage for the remaining factor will be 100 percent.~~

~~(e) **Apportionment of Income; Business Joint Ventures and Business Partnerships.** A corporation which is involved in a business joint venture, or is a partner in a business partnership, must include its pro rata share of the joint venture or partnership property, payroll, and gross receipts in its own three factor formula.~~

~~(5) **Apportionment of Income; Where Not Principally From Tangible Personal Property.** Except as provided in Section 48-7-31(d)(3.1) or (3.2) of the Georgia Code Annotated, any corporation whose income is derived principally from business other than the manufacture, production, or sale of tangible personal property shall be taxed upon that portion of its net income attributable to this state, determined by use of a three factor apportionment formula. The three factors in the apportionment formula are the property factor, the payroll factor, and the gross receipts factor.~~

~~(a) **Property Factor.** The property factor shall be computed in accordance with the rules which are outlined at Department of Revenue Regulations Section 560-7-7-.03(4)(a).~~

~~(b) **Payroll Factor.** The payroll factor shall be computed in accordance with the rules which are outlined at Department of Revenue Regulations Section 560-7-7-.03(4)(b).~~

~~(c) **Gross Receipts Factor.**~~

~~1. **General Rule.** O.C.G.A. Section 48-7-31(d)(3)(C) states that the gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period and the denominator of which is the total gross receipts from business done everywhere during the tax period. Gross receipts are in this state if the receipts are derived from customers~~

~~within this state or if the receipts are otherwise attributable to this state's marketplace. This gross receipts factor is designed to measure the marketplace for the taxpayer's goods and services.~~

~~2. For purposes of the three factor formula provided for in O.C.G.A. Section 48-7-31(d)(3) and known as the (d)(3) formula, the term "gross receipts" means all gross receipts of the taxpayer which are not connected with the production of income subject to allocation under O.C.G.A. Section 48-7-31(c).~~

~~3. "Customers within this state" as used within this Regulation shall mean (i) a customer that is engaged in a trade or business and maintains a regular place of business within this state; and (ii) a customer that is not engaged in a trade or business whose billing address is in this state.~~

~~4. "Regular place of business" as used within this Regulation means an office, factory, warehouse or other business location at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees, agents or representatives of the taxpayer.~~

~~5. "Billing address" as used within this Regulation means the location indicated in the books and records of the taxpayer as the address where any notice, statement and/or bill relating to a customer's account is mailed.~~

~~6. "Attributable to this state's marketplace" as used within this Regulation means directly or indirectly computed or determined by reference to factors of a taxpayer's business in this state in relation to other states. Some examples of factors that may be used to measure the marketplace are: mileage for transportation companies; audience for advertising receipts of broadcasters; circulation for advertising receipts of publishers; and product receipts for royalty charges or franchise fees. Receipts which are related to a service that is consumed by the customer in Georgia~~

~~and one or more additional states shall be attributed to the states in a manner which reflects the market for the service, or the use or enjoyment of the service by the customer.~~

~~7. Receipts from the sale of tangible personal property will be included in the gross receipts factor in accordance with the rules which are outlined at Department of Revenue Regulations Section 560-7-7-.03(4)(c).~~

~~(d)~~ **~~Georgia Apportionment Ratio.~~** ~~The three apportionment factors, determined separately above, shall be weighted 25 percent to the property factor, 25 percent to the payroll factor, and 50 percent to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, the weighted percentage for the other will be 33-1/3 percent and the weighted percentage for the gross receipts factor will be 66-2/3 percent. If the denominator for the gross receipts factor is zero, the weighted percentage for the property and payroll factors will be 50 percent each. If the denominator for any two factors are zero, the weighted percentage for the remaining factor will be 100 percent.~~

~~(e)~~ **~~Special Rules: In General.~~**

~~1. This subparagraph provides for a departure from the standard allocation and apportionment provisions for corporations whose income is derived principally from business other than the manufacture, production, or sale of tangible personal property. The departure rules provide that if the allocation and apportionment provisions of Section 48-7-31(d)(3) do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition the commissioner for, or the commissioner may by regulation require, with respect to all or any part of the taxpayer's business activity, if reasonable:~~

~~(i) Separate accounting;~~

~~(ii) The exclusion of any one or more of the factors;~~

~~(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity within this state; or~~

~~(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

~~2. This subparagraph permits a departure from the standard allocation and apportionment provisions only in limited and specific cases. It may be invoked only in those cases where unusual fact situations, which ordinarily will be unique and nonrecurring, produce incongruous results under the standard allocation and apportionment provisions.~~

~~3. In order to depart from the standard allocation and apportionment provisions, a corporation must petition the commissioner and receive permission to depart prior to filing a return. Permission will be extended for one year only unless otherwise specified by the commissioner.~~

~~4. The taxpayer shall have the burden of establishing, by clear and cogent evidence, that the standard allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business within and without the state.~~

~~(f) **Special Rules: Business Joint Ventures and Business Partnerships.** A corporation which is involved in a business joint venture, or is a partner in a business partnership, must include its pro rata share of the joint venture or partnership property, payroll and gross receipts in its own three factor formula.~~

~~(g) **Special Rules: Petroleum Pipeline Companies.** Where the net business income of the corporation is derived principally from~~

~~the interstate transportation of crude oil or refined petroleum products as a common carrier, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following three factor formula:~~

~~1. **Property Factor.** The property factor shall be computed in accordance with the rules which are outlined at Department of Revenue Regulations Section 560-7-7-.03(4)(a).~~

~~2. **Payroll Factor.** The denominator of the payroll factor shall be computed in accordance with the rules which are outlined at Department of Revenue Regulations Section 560-7-7-.03(4)(b). The numerator of the payroll factor shall be determined by multiplying the total amount of compensation paid by the taxpayer everywhere during the tax period by a fraction, the numerator of which is the barrel miles in this state during the tax year and the denominator of which is the total barrel miles everywhere during the tax year. The term "barrel miles" is defined as the movement of one barrel of crude oil or one barrel of refined petroleum product for a distance of one mile.~~

~~3. **Gross Receipts Factor.** The denominator of the gross receipts factor shall be computed in accordance with the rules which are outlined at Department of Revenue Regulations Section 560-7-7-.03(5)(c). The numerator of the gross receipts factor shall be determined by multiplying the total gross receipts of the taxpayer from business done everywhere by a fraction, the numerator of which is the barrel miles in this state during the tax year and the denominator of which is the total barrel miles everywhere during the tax year.~~

~~4. **Georgia Apportionment Ratio.** The three apportionment factors, determined separately above, shall be weighted 25 percent to the property factor, 25 percent to the payroll factor, and 50 percent to the gross receipts factor. The Georgia apportionment~~

~~ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, the weighted percentage for the other will be 33 1/3 percent and the weighted percentage for the gross receipts factor will be 66 2/3 percent. If the denominator for the gross receipts factor is zero, the weighted percentage for the property and payroll factors will be 50 percent each. If the denominator for any two factors are zero, the weighted percentage for the remaining factor will be 100 percent.~~

~~(6) **Effective Date.** The principles set forth in this regulation will apply to taxable years beginning on or after January 1, 2002. Taxable years beginning before January 1, 2002 will be governed by the regulations of Chapter 560-7 as they exist before January 1, 2002 in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.~~

(1) **What constitutes doing business.** A corporation will be considered to be doing business within this state if it performs acts or consummates transactions within this state which result in financial profit or gain, or if it engages within this state in any activities or transactions for the purpose of financial profit or gain. A corporation will be considered to be engaged in an activity in this state whose agent, salesman, or other representative in whatever capacity, engages in solicitation, demonstration, taking of orders, collection activities, or any other activity for the purpose of financial profit or gain. A corporation will be considered to be owning property in this state, doing business in this state, or deriving income from sources within this state whenever the corporation is a partner, whether limited or general, in a partnership which owns property in this state, does business in this state, or derives income from sources within this state. A corporation will be considered to be owning property in this state, doing business in this state, or deriving income from sources within this state whenever the corporation is a member of a limited liability company or similar nontaxable entity, not treated as a

corporation for federal income tax purposes, which owns property in this state, does business in this state, or derives income from sources within this state.

(2) **Allocation and apportionment of income.** When a corporation's entire net income is derived from owning property within this state, doing business within this state, or deriving income from sources within this state, the entire net income shall be taxable by this state. When a corporation's business income is derived in part from property owned or business done within this state and in part from property owned or business done outside this state, the tax shall be imposed only on that portion of the business income which is reasonably attributable to the property owned and business done within this state. To arrive at net income subject to apportionment, there shall be excluded income subject to allocation as provided in paragraph (3) of this regulation.

(3) **Allocation of income.** O.C.G.A. § 48-7-31(c) applies only to income from property held solely for investment. All expenses connected with earning such investment income, including interest on money borrowed to pay for such property, ad valorem and other taxes on such property, and all other expenses connected with holding and owning such property shall be deducted from the gross investment income. The net investment income is not subject to apportionment.

(a) **Real property investment income.** If the investment property is real estate located within the state, the entire net investment income from such real property shall be allocated to Georgia. If such real estate is situated outside the state, the entire net investment income therefrom shall be allocated outside Georgia.

(b) **Intangible property investment income.** If the investment property is intangible, and the corporation is a domestic corporation, or a domesticated foreign corporation, or an

undomesticated foreign corporation having its principal office in Georgia, the entire net investment income from such intangible property shall be allocated to Georgia; or if such intangible property was acquired as a result of business done or property owned in Georgia, the entire net investment income therefrom shall be allocated to Georgia.

(c) **Allocation of gain or loss on sale of investment property.** Net gain or loss from the sale or other disposition of investment property which is not held, owned or used in connection with the trade or business of the corporation, and not held for sale in the regular course of the trade or business of the corporation, shall be allocated. Such gain or loss shall be allocated to Georgia if the investment property is real estate situated in Georgia, or tangible personal property located in Georgia, or intangible property the net investment income from which is allocated to Georgia hereunder. Otherwise, such gain or loss shall be allocated outside the state.

(4) **Apportionment of income; tangible personal property.** Any corporation whose net business income is principally derived from the manufacture, production, sale, or lease of tangible personal property shall be taxed upon that portion of its net income attributable to this state, determined by use of a three-factor apportionment formula. The three factors in the apportionment formula are the property factor, the payroll factor, and the gross receipts factor. The method of apportioning income using ratios related to property, payroll, and gross receipts shall hereinafter be referred to as the three-factor formula. However, for tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

(a) **Property factor.**

1. General rule. The property factor of the three-factor formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular

course of the taxpayer's trade or business. The term "real and tangible personal property" includes, but is not limited to, land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency. Property used in connection with the production of income subject to allocation shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of income subject to allocation shall be included in the factor only to the extent that the property is used in the regular course of the taxpayer's trade or business. The method used to determine that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor.

2. Property used for the production of business income. Property shall be included in the property factor if it is actually used, or is available for or capable of being used, during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant that is temporarily idle, or raw material reserves not currently being processed, are included in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event.

3. Consistency in reporting. When filing returns with this state, if the taxpayer departs from or modifies the manner of valuing

property, or from excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose on the return for the current year the nature and extent of the modification.

4. Denominator. The denominator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of the taxpayer's trade or business.

5. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the taxpayer's trade or business. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by the taxpayer in the denominator of the taxpayer's property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment which is located within and outside this state during the tax period shall be determined, for purposes of the numerator of the factor, on the basis of the total time located within the state during the tax period, or another reasonable method which reflects the use of the property in this state as approved and determined by the Commissioner.

6. Valuation of owned property.

(i) Original cost; defined. Property owned by the taxpayer shall be valued at its original cost. As a general rule, "original cost" is deemed to be the original basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital

additions or improvements thereto and partial dispositions thereof, by reason of sale, exchange, abandonment, etc. If the original cost of the property cannot be ascertained, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. Depletable property shall be valued at its original cost less any depletion taken for federal tax purposes.

(ii) Inventory. Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(iii) Gift or inheritance. Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

7. Valuation of rented property.

(i) General rule. Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when they are from activities which constitute the taxpayer's regular trade or business.

(ii) Annual rental rate; defined. "Annual rental rate" is the amount paid as rental for property for a twelve-month period (i.e., the amount of the annual rent). Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of twelve or more months and the current tax period covers a period of less than twelve months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax

period shall be annualized. If the rental term is for less than twelve months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(iii) Annual rent. "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use of the property and includes:

(I) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money, or as a percentage of sales, profits, or otherwise; and

(II) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges for utilities, janitorial services, etc. If a payment includes rent and other unsegregated charges, the amount of rent shall be determined by taking into consideration the relative values of the rent and other associated items.

(iv) Royalties. Annual rent does not include royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(v) Leasehold improvements. For purposes of the property factor, leasehold improvements shall be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold

improvements shall be included in the factor.

(vi) Where no rent is charged. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of the fair market rental rate for such property.

8. Averaging property values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Commissioner may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(b) **Payroll factor.**

1. General rule. The payroll factor of the three-factor formula shall include the total amount paid by the taxpayer in the regular course of the taxpayer's trade or business for compensation during the tax period.

2. Method of Accounting. The total amount of compensation is determined based upon the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation using that method for unemployment compensation purposes. The compensation of any employee for activities in connection with the production of income subject to allocation shall be excluded from the factor.

3. Compensation. The term "compensation" means wages,

salaries, commissions, and any other form of remuneration paid directly or indirectly to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly or indirectly to employees are included in the payroll factor. Amounts considered paid include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the Federal Internal Revenue Code.

4. Employee. The term "employee" means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. How compensation is paid by the employer to an employee for personal services, whether directly, indirectly, or through a third party, and what the employee is called, whether partner, agent, or independent contractor, is immaterial. The existence of an actual employer-employee relationship is the fact that determines inclusion of compensation in the payroll ratio. Whether the employer-employee relationship exists or not will be determined in doubtful cases upon an examination of the particular facts of each case.

5. Modification of compensation. When filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid that was used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

6. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period.

7. Numerator. The numerator of the payroll factor is the total amount of compensation paid by the taxpayer in this State during the tax period.

8. Compensation paid in this state. Compensation is paid in this state if any one of the following tests are met:

(i) The employee's service is performed entirely within this state; or

(ii) The employee's service is performed both within and outside this state and the service performed outside this state is incidental to the employee's service within this state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(iii) Some of the service is performed in this state and the base of operations or the place from which the service is directed or controlled is in this state; or

(iv) Some of the service is performed in this state and the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

In each of the above four tests, the employee's total compensation is determined to be Georgia compensation and is included in the numerator of the payroll factor. The term "base of operations" means the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of trade or business at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(c) **Gross receipts factor.**

1. General rule. O.C.G.A. § 48-7-31 provides that the gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period, and the denominator of which is the total gross receipts from business done everywhere during the tax period. Except as otherwise provided in subparagraph (4)(c), the term "gross receipts" as used in subparagraph (4)(c) means all gross receipts derived by the taxpayer from products shipped or delivered to customers in the regular course of the taxpayer's trade or business.

2. Gross receipts; manufacturing and resale. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, all gross receipts from the sale of such goods or products, or other property of a kind which would properly be included in inventory of the taxpayer if on hand at the close of the tax period, and which are held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business, are included in the gross receipts factor. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all service charges or carrying charges incidental to such sales. Federal and state excise taxes, including sales taxes, shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

3. Where a taxpayer's gross receipts are also derived from activities described in paragraph (5), gross receipts shall also include the gross receipts from the activities described in paragraph (5) and shall be attributed to Georgia based upon subparagraph (5)(c).

4. Lease of tangible personal property. Gross receipts shall include receipts which are received from the lease of tangible personal property where such receipts are from activities which

constitute the taxpayer's regular trade or business. The receipts shall be considered Georgia gross receipts if the property is located in this state. The gross receipts of mobile or movable property such as construction equipment, trucks, or leased electronic equipment which is located within and outside this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of the total time within the state during the tax period or another reasonable method which reflects the use of the property in this state as approved and determined by the Commissioner.

5. Gross receipts; fixed-fee contracts. In the case of cost plus fixed-fee contracts, such as the operation of a government-owned plant for a cost plus a fixed fee, gross receipts shall include only the fixed fee charged for the operation of the plant.

6. Modification of gross receipts. In filing returns with Georgia, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the gross receipts factor used in returns for prior years, the taxpayer shall disclose on the return for the current year the nature and extent of the modification.

7. Denominator. The denominator of the gross receipts factor shall include the total gross receipts as defined or otherwise provided in subparagraph (4)(c).

8. Numerator. The numerator of the gross receipts factor shall include the gross receipts attributable to this state and derived by the taxpayer from products shipped or delivered to customers in this State in the regular course of the taxpayer's trade or business or that are otherwise attributable to Georgia as provided in subparagraph (4)(c).

9. Sales of tangible personal property in this state.

(i) Gross receipts from the sales of tangible personal property are attributable to this state if the property is delivered or shipped

to a customer within this state regardless of the f.o.b. point or other conditions of sale. However, when property is picked up by an out-of-state customer at the taxpayer's place of business in Georgia for transport out of the state, the gross receipts from such sales are not attributable to this state. The actual place of transfer and the manner by which the property arrives at its eventual destination is immaterial.

(ii) Property shall be deemed to be delivered or shipped to a customer within this state if the recipient is located in this state, even though the property is ordered from outside this state. Additionally, when property is picked up by a Georgia customer at the taxpayer's out-of-state place of business for transport to this state, the gross receipts from such sales are attributable to this state. The actual place of transfer and the manner by which the property arrives at its eventual destination is immaterial.

(iii) Property is delivered or shipped to a customer within this State if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "customer within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the customer, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, gross receipts from the sales are attributable to this state.

(d) **Georgia apportionment ratio.**

1. The three apportionment factors for tax years beginning before January 1, 2006, determined separately above, shall be

weighted 25% to the property factor, 25% to the payroll factor, and 50% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 33-1/3% and the weighted percentage for the gross receipts factor will be 66-2/3%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

2. The three apportionment factors for tax years beginning on or after January 1, 2006 and before January 1, 2007, determined separately above, shall be weighted 10% to the property factor, 10% to the payroll factor, and 80% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 11.11% and the weighted percentage for the gross receipts factor will be 88.89%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

3. The three apportionment factors for tax years beginning on or after January 1, 2007 and before January 1, 2008, determined separately above, shall be weighted 5% to the property factor, 5% to the payroll factor, and 90% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 5.26% and the weighted percentage for the gross receipts factor will be 94.74%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the

property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

4. For tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

(e) **Apportionment of income: business joint ventures and business partnerships.** A corporation that is involved in a business joint venture, is a member of a limited liability company or similar nontaxable entity not treated as a corporation for federal income tax purposes, or is a partner in a business partnership, must include its pro rata share of the entity's property, payroll, and gross receipts in its own apportionment formula. In determining its income, the corporation includes its share of the entity's income before the entity apportions and allocates its income.

(5) **Apportionment of income; where not principally from tangible personal property.** Except as otherwise provided in Chapter 7 of Title 48 of the O.C.G.A., any corporation whose net business income is derived principally from business other than the manufacture, production, or sale of tangible personal property, shall be taxed upon that portion of its net income attributable to this state, determined by use of a three-factor apportionment formula. The three factors in the apportionment formula are the property factor, the payroll factor, and the gross receipts factor. However, for tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

(a) **Property factor.** The property factor shall be computed in accordance with the rules which are outlined under subparagraph (4)(a).

(b) **Payroll factor.** The payroll factor shall be computed in

accordance with the rules which are outlined under subparagraph (4)(b).

(c) **Gross receipts factor.**

1. General rule. O.C.G.A § 48-7-31 provides that the gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period, and the denominator of which is the total gross receipts from business done everywhere during the tax period. Gross receipts are in this state if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. This gross receipts factor is designed to measure the marketplace for the taxpayer's goods and services.

2. For purposes of subparagraph (5)(c), the term "gross receipts" means all gross receipts received from activities which constitute the taxpayer's regular trade or business. This shall not include:

i. Receipts from the sale of assets unless such receipts are from activities which constitute the taxpayer's regular trade or business;

ii. Apportionable interest and dividends unless the taxpayer's regular trade or business involves the loaning and/or investing of money;

iii. Gross receipts from the management of working capital;

iv. Receipts from income that is allocable;

v. Apportionable rents or royalties unless such receipts are from activities which constitute the taxpayer's regular trade or business; and

vi. Other similar income;

3. “Customers within this state” as used within this Regulation shall mean:

(i) A customer that is engaged in a trade or business and maintains a regular place of business within this state; or

(ii) A customer that is not engaged in a trade or business whose billing address is in this state.

4. “Regular place of business” as used within this Regulation means an office, factory, warehouse, or other business location at which the customer conducts business in a regular and systematic manner and which is continuously maintained, occupied and used by employees, agents or representatives of the customer.

5. “Billing address” as used within this Regulation means the location indicated in the books and records of the taxpayer as the address of record where any notice, statement and/or bill relating to a customer’s account is mailed.

6. The following shall be used to determine the amount that is attributable to this state’s marketplace for purposes of subparagraph (5)(c):

(i) Computer software. Gross receipts from the sale, lease, development, or license of custom computer software shall be treated according to subparagraph (5)(c)6.(ii). The gross receipts from the sale, lease, development, or license of prewritten computer software shall be treated pursuant to subparagraph (4)(c). Modification to existing prewritten computer software to meet the customer’s needs is custom computer software only to the extent of the modification. The manner in which the computer software is delivered, whether it be in a tangible medium or electronically, is not considered in determining whether the computer software is custom computer software or prewritten computer software.

Additionally, documentation related to the software shall be treated in the same manner as the computer software and shall not be considered in determining whether the computer software is custom computer software or prewritten computer software. For purposes of this regulation the following definitions shall apply:

(I) The term "computer software" means any computer data, program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the foregoing, the term "computer software" shall include operating programs, application programs, system programs, and subdivisions (such as assemblers, compilers, generators, and utility programs).

(II) The term "custom computer software" means computer software, including custom updates, which is designed and developed by the author to the specifications of a specific purchaser. Any subsequent sale of custom software shall be deemed prewritten computer software.

(III) The term "prewritten computer software," also known as "canned computer software," means computer software that is designed, prepared, or held for general distribution or repeated use, or software programs developed in-house and subsequently held or offered for repeated sale, lease, license, or use.

(IV) The term "application program" means a set of statements or instructions that when incorporated in a machine-usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result for the end user. Application programs include any other computer software that does not qualify under subparagraph (V) or (VI).

(V) The term "operating program" means a set of statements or instructions that when incorporated into a machine or device having information processing capabilities is an interface between the computer hardware and the application program or system program.

(VI) The term "system program" means a set of statements or instructions that interacts with the operating program that is developed, licensed, and intended to build, test, manage, or maintain application programs.

(ii) Services. Except as otherwise provided, all gross receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the service receives all of the benefit of the service in Georgia. If the recipient of the service receives some of the benefit of the service in Georgia, the gross receipts are included in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the service in Georgia. The following noninclusive examples illustrate the application of this subparagraph:

(I) A real estate development firm from State A is developing a tract of land in Georgia. The real estate development firm from State A engages a surveying company from State B to survey the tract of land in Georgia. The survey work is completed and the plats are drawn in Georgia. All of the gross receipts from this survey work are attributable to Georgia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Georgia.

(II) A corporation headquartered in State A is building an office complex in Georgia. The corporation from State A contracts with an engineering firm from State B to oversee construction of the buildings on the site. The engineering firm performs some of their service in Georgia at the building site and additional service in

State B. All of the gross receipts from the engineering service are attributable to Georgia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Georgia.

(III) A corporation from State A contracts with a computer software company from State B to develop and install custom computer software for a business office located in Georgia of the corporation from State A. The software will only be used by the business office in Georgia. The software development occurs in State B. All of the gross receipts from the software development and installation are attributable to Georgia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Georgia.

(IV) A corporation from State A contracts with a computer software company from State B to develop and install custom computer software for the corporation from State A. The software will be used by the corporation from State A in a business office in Georgia and in a business office in State A. The software development occurs in State B. The gross receipts from the software development and installation are included in the numerator of the apportionment factor in proportion to the extent the software is used in Georgia.

(V) A corporation located in Georgia performs direct mail activities for a customer located in State A. The direct mail activities include the preparation and mailing of materials to households located throughout the United States. The corporation located in Georgia performed some activities related to the direct mail contract in State A. One percent of the direct mailings were sent to addresses within Georgia. One percent of the gross receipts related to this direct mail contract are thus attributable to Georgia and included in the numerator of the apportionment factor because the recipient of the service received 1 percent of the benefit of the service in Georgia.

(VI) A corporation located in State A, who otherwise does business in Georgia, performs direct mail activities for a customer located in State B. The direct mail activities include the preparation and mailing of materials to households throughout the United States. The corporation located in State A printed and mailed the direct mail materials to households on a mailing list prepared by the corporation in State A. Five percent of the direct mailings were sent to addresses within Georgia. Five percent of the gross receipts related to this direct mail contract are thus attributable to Georgia and included in the numerator of the apportionment factor.

(VII) A company which owns apartments in Georgia and State A contracts with a pest control corporation for pest control activities. One contract is entered into which covers 100 apartment units in Georgia and 400 apartment units in State A. Twenty percent (100/500) of the gross receipts from the pest control contract are attributable to Georgia and are included in the numerator of the apportionment factor as 20 percent of the apartment units are located in Georgia and in the absence of more accurate records, it is therefore presumed that the number of apartment units is the best measure of the extent to which the recipient of the service received benefit of the service in Georgia.

(iii) Rental or lease of real property. Gross receipts shall include receipts which are received from the rental or lease of real property where such receipts are from activities which constitute the taxpayer's regular trade or business. Such receipts shall be attributable to this state's marketplace if the property is located in this state.

(iv) Brokerage Services. Gross receipts derived from securities brokerages services attributable to this State are determined by multiplying the total dollar amount of gross receipts from securities brokerage services by a fraction, the numerator of which

is the gross receipts from securities brokerage services from customers within this state, and the denominator of which is the gross receipts from securities brokerage services from all customers. Gross receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by the broker's customers, and fees and receipts of all kinds from the underwriting of securities. For example, a broker executes a transaction on a stock exchange for a customer within this state, selling 100 shares of Corporation X for $1,000. The broker earns a $50 commission on the transaction. Only the commission is included in the numerator and denominator of the broker's gross receipts factor. If gross receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the gross receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates transactions for the customer.

(v) Services to Regulated Investment Companies. Gross receipts from services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerages services to, or on behalf of, a regulated investment company or its beneficial owners (including gross receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company), shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subparagraph, "domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the

shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the gross receipts derived from each regulated investment company. The total amount of gross receipts attributable to this State shall be equal to the total gross receipts received by each regulated investment company multiplied by a fraction:

(I) The numerator of which is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who are domiciled in this state; and

(II) The denominator of which is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.

(III) For purposes of the fraction, the year shall be the taxable year of the regulated investment company that ends with or within the taxable year of the taxpayer.

(vi) Print Media. A person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material shall source their receipts pursuant to this subparagraph.

(I) For purposes of subparagraph (5)(c)6.(vi) the following definitions shall apply:

I. The term "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of

a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

II. The terms "Purchaser" and "Subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(II) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

I. Gross receipts derived from the sale of tangible personal property, including printed materials shall be treated pursuant to subparagraph (4)(c).

II. Gross receipts derived from advertising or the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined by the taxpayer for each individual publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as the Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(vii) Broadcasting Film or Radio Programing. A person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, shall source their receipts pursuant to this subparagraph.

(I) For purposes of subparagraph (5)(c)6.(vii) the following definitions shall apply:

I. The term "Film" or "Film programming" means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium. Each episode of a series of films produced for television shall constitute a separate "film" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

II. The term "Radio" or "Radio programming" means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium. Each episode of a series of radio programming produced for radio broadcast shall constitute a separate "radio programming" notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

III. The term "Release" or "In release" means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a

film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.

IV. The term "Rent" shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

V. The term "Subscriber" as it relates to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

VI. The term "Telecast" or "Broadcast" (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

(II) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to the following:

I. Gross receipts, including advertising revenue, from television film or radio programming in release to or by a television or radio station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter "audience factor") that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks). The audience factor for

television film or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

II. Gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

III. Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in subparagraph (4)(c).

(viii) Royalties. Gross receipts shall include royalty or other receipts for the use of, or for the privilege of using, intangible property including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or similar items where such receipts are from activities which constitute the taxpayer's regular trade or business. Except as otherwise provided in this regulation, such receipts must be attributed to the state in which the property is used by the purchaser. If the property is used in more than one state, then the royalties or other income must be apportioned to Georgia pro rata according to the portion of use in

Georgia. Intangible property is used in Georgia if the purchaser uses the intangible property or the rights therein in Georgia.

(ix) The taxpayer must expend a reasonable amount of effort to obtain the information to determine the amount that is attributable to this state's marketplace. If the information is not available, the taxpayer may use another reasonable method to determine the amount attributable to this state's marketplace. Such other method is subject to review, adjustment, or change by the Commissioner.

7. Where a taxpayer's gross receipts are also derived from activities described in paragraph (4), gross receipts shall also include the gross receipts from the activities described in paragraph (4) and shall be attributed to Georgia based upon subparagraph (4)(c).

(d) **Georgia apportionment ratio.**

1. The three apportionment factors for tax years beginning before January 1, 2006, determined separately above, shall be weighted 25% to the property factor, 25% to the payroll factor, and 50% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 33-1/3% and the weighted percentage for the gross receipts factor will be 66-2/3%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

2. The three apportionment factors for tax years beginning on or after January 1, 2006 and before January 1, 2007, determined separately above, shall be weighted 10% to the property factor, 10% to the payroll factor, and 80% to the gross receipts factor.

The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 11.11% and the weighted percentage for the gross receipts factor will be 88.89%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

3. The three apportionment factors for tax years beginning on or after January 1, 2007 and before January 1, 2008, determined separately above, shall be weighted 5% to the property factor, 5% to the payroll factor, and 90% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 5.26% and the weighted percentage for the gross receipts factor will be 94.74%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

4. For tax years beginning on or after January 1, 2008 the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

(e) **Special rules: in general.**

1. This subparagraph provides for a departure from the standard allocation and apportionment provisions for corporations whose income is derived principally from business other than the manufacture, production, sale, or lease of tangible personal property. The departure rules provide that if the allocation and apportionment provisions do not fairly represent the extent of the

taxpayer's business activity in this state, the taxpayer may petition the Commissioner for, or the Commissioner may by regulation require, with respect to all or any part of the taxpayer's business activity, if reasonable:

(i) Separate accounting;

(ii) The exclusion of any one or more of the factors;

(iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity within this state; or

(iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

2. This subparagraph permits a departure from the standard allocation and apportionment provisions only in limited and specific cases. It may be invoked:

(i) Only in those cases where unusual fact patterns occur that are unique, nonrecurring, and which will produce incongruous results based upon standard allocation and apportionment provisions; and

(ii) Only when the evidence that the proposed allocation and apportionment method would more clearly reflect the income attributable to the trade or business within Georgia is so clear, direct, convincing, and weighty that the Commissioner comes to a clear conviction without hesitancy as to the validity of the taxpayer's proposed method.

3. In order to depart from the standard allocation and apportionment provisions, a corporation must petition the Commissioner and receive permission to do so prior to filing a return. The taxpayer must file the petition two and one-half months before the due date of the return (including extensions).

Permission will be granted for one year only unless otherwise specified by the Commissioner.

4. The taxpayer shall have the burden of establishing, by clear and cogent evidence, that the standard allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business within and outside the state.

(f) **Special rules: business joint ventures and business partnerships.** A corporation which is involved in a business joint venture, is a member of a limited liability company or similar nontaxable entity not treated as a corporation for federal income tax purposes, or is a partner in a business partnership, must include its pro rata share of the entity's property, payroll and gross receipts in its own apportionment formula. In determining its income, the corporation includes its share of the entity's income before the entity apportions and allocates its income.

(g) **Special rules: petroleum pipeline companies.** Where the net business income of the corporation is derived principally from the interstate transportation of crude oil or refined petroleum products as a common carrier, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following three-factor formula. However, for tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor computed as provided below in subparagraph (5)(g)3. For purposes of subparagraph (5)(g), the term "barrel miles" is defined as the movement of one barrel of crude oil or one barrel of refined petroleum product for a distance of one mile.

1. Property factor. The property factor shall be computed in accordance with the rules outlined under subparagraph (5)(a).

2. Payroll factor. The payroll factor shall be computed in

accordance with the rules outlined under subparagraph (5)(b) except the numerator of the payroll factor shall be determined by multiplying the total amount of compensation paid by the taxpayer everywhere during the tax period by a fraction, the numerator of which is the barrel miles in this state during the tax year, and the denominator of which is the total barrel miles everywhere during the tax year.

3. Gross receipts factor. The gross receipts factor shall be computed in accordance with the rules which are outlined under subparagraph (5)(c) except that the numerator of the gross receipts factor shall be determined by multiplying the total gross receipts of the taxpayer from business done everywhere by a fraction, the numerator of which is the barrel miles in this state during the tax year, and the denominator of which is the total barrel miles everywhere during the tax year.

4. Georgia apportionment ratio. The apportionment ratio shall be computed as provided in subparagraph (5)(d).

(h) **Special rules: Motor Carriers.** Where the net business income of the motor carrier is derived principally from the transportation of freight and passengers for hire, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the gross receipts factor. The gross receipts factor shall be computed in accordance with the rules which are outlined under subparagraph (5)(c) except that the numerator of the gross receipts factor shall be determined by multiplying the total gross receipts of the taxpayer from business done everywhere by a fraction, the numerator of which is the vehicle miles in this state during the tax year, and the denominator of which is the total vehicle miles everywhere during the tax year. For purposes of this subparagraph, the term "vehicle miles" means the mileage traveled by a carrier with cargo or passengers or on a scheduled route.

(6) **Effective date.** The principles set forth in this regulation will apply to taxable years beginning on or after January 1, 2006. Taxable years beginning before January 1, 2006 will be governed by the regulations of Chapter 560-7 as they existed prior to January 1, 2006, in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-31.